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IN THE

Supreme Court of the United States

Supreme Court, U. S.
FILED
AUG 14 1973

OCTOBER TERM, 1973

CITY OF NORTH LAS VEGAS,

Petitioner,

v.

CLARK COUNTY and
SUNRISE MANOR PROTECTIVE ASSOCIATION,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM S. BARKER
514 South Third Street
Las Vegas, Nevada 89101
Phone: [702] 384-4012
Counsel for Petitioner

AUGUST 13, 1973

IN THE
SUPREME COURT OF THE UNITED STATES.

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October Term, 1973

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CITY OF NORTH LAS VEGAS,

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-vs-

CLARK COUNTY and
SUNRISE MANOR PROTECTIVE ASSOCIATION

Respondents.

———— * ————

The Petitioner, City of North Las Vegas, prays that a Writ of Certiorari issue to review the opinion and Judgment of the Supreme Court of the State of Nevada rendered in these proceedings on January 10, 1973; and followed by subsequent orders entered on March 20, 1973; March 23, 1973; March 29, 1973; and July 5, 1973.

OPINIONS BELOW

The opinion of the Supreme Court being 82 Nev., Adv. Op. 2, _____ Nev. _____, _____ P2d _____ (1973), appears at Appendix A, *infra*, page 15; a subsequent order denying a rehearing appears at Appendix B, page 19, *infra*; after two further orders of the Supreme Court, a final subsequent order of the Supreme Court appears at Appendix C, page 20, *infra*.

The opinion of the District Court appears at Appendix D, page 21, *infra*.

JURISDICTION

The order or judgment of the Supreme Court of the State of Nevada was entered on the 10th day of January, 1973. [Appendix A, page 15, *infra*.] Subsequent orders of the Supreme Court of Nevada were entered on March 20, 1973; [Appendix B, page 19, *infra*]; March 23, 1973; March 29, 1973; and July 5, 1973. [Appendix C, page 20, *infra*.] An Order Extending Time to File Petition for Writ of Certiorari was entered by the Supreme Court of the United States on June 25, 1973, extending the time to file this Petition for Writ of Certiorari to August 17, 1973, without prejudice to the Court's consideration of whether Petitioner's application for extension of time was timely filed. [United States Supreme Court No. A 1284] This Petition for Certiorari was filed by August 17, 1973. That the jurisdiction of this Court is invoked under 28 U.S.C. sec. 1257 (3).

QUESTIONS PRESENTED

The Petitioner in compliance with Nevada Revised Statutes, Chapter 268 passed and adopted two ordinances being Number 395 (Annexation No. 38) and Number 398 (Annexation No. 41). These Ordinances were challenged in the Eighth Judicial District Court, County of Clark, State of Nevada. The District Court held Annexations No. 38 and No. 41 to be valid. The Plaintiffs appealed the District Court's ruling to the Nevada Supreme Court. A majority of the facts of the case were stipulated to by all the parties. [Appendix E, page 27, *infra.*] The Nevada Supreme Court, basing its decision on facts contrary to the stipulated facts of record, more than two years later, reversed the holding of the District Court. The questions thereby arising are:

1. Whether the action of the Nevada Supreme Court, through error in interpretation of facts, usurped the powers of the Legislative Department of the State Government which is violative of Article 3 of the Nevada Constitution which clearly divides and separates the Legislative and Judicial functions of the State; that if by such violation of Article 3 of the Nevada Constitution there was a violation of the Ninth and Tenth Amendments of the United States Constitution which retain to and reserve to, respectively, the people all rights not specifically enumerated or delegated to the United States, to-wit; by violation of said State Constitution which was written by the people under the people's power retained or reserved by the United States Constitution.

2. Whether the Nevada Supreme Court, through its error in interpretation of facts, deprived the citizens of the annexed areas and of North Las Vegas its fair and lawful portion of all tax revenues and in doing such brought about

denial of equal protection of the law, United States Constitution, Fourteenth Amendment, Section 1.

3. Whether the action of the Nevada Supreme Court, through error in interpretation of facts, and consequently as a result of the subsequent reapportionment is violative of the one man, one vote principle and the United States Constitution, Fourteenth Amendment, Section 1.

4. Whether by action of the Nevada Supreme Court, through error in interpretation of facts, the Petitioner will have denied to it, on behalf of the citizens of North Las Vegas and those citizens residing in the annexed areas, the rights and privileges guaranteed under the Fifth Amendment of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Ninth Amendment:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Constitution of the United States, Tenth Amendment:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Constitution of the United States, Fourteenth Amendment:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of the United States, Fifth Amendment:

> ". . . nor shall any person . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

At its adjourned regular meeting held on December 1, 1969, the Petitioner, City of North Las Vegas, adopted two annexation ordinances being Ordinance No. 395 (Annexation No. 38) and Ordinance No. 398 (Annexation No. 41). On December 15, 1969, Respondent (Plaintiff) Sunrise Manor Town Protective Association, et al., filed a Complaint for declaratory relief challenging said annexations. Earlier, on November 24, 1969, Plaintiff County of Clark filed an Amended Complaint challenging the Petitioner's earlier resolution of intent, etc., in regard to the annexations. Later, these two actions were consolidated. A majority of the facts in the case were stipulated to by all the parties and filed. [Appendix E, page 27, *infra.*]

After a contested trial, the District Court denied the relief prayed for by Plaintiffs and ordered that Annexations No. 38 and 41 be, and the same become a valid part of the Community of North Las Vegas, pursuant to North Las Vegas Ordinances No. 395 and No. 398, respectively.

Plaintiffs below appealed the decision of the District Court to the Supreme Court of Nevada. Oral argument was presented to the Nevada Supreme Court in December, 1971. On January 10, 1973, the Nevada Supreme Court rendered its Opinion [Appendix A, page 15, *infra.*] and held the two annexation ordinances adopted by the Petitioner, City of North Las Vegas, invalid.

On or about the 30th day of January, 1973, Petitioner filed its Petition for Rehearing with the Supreme Court of Nevada. On March 20, 1973, Rehearing was denied. [Appendix B, page 19, *infra.*] On the 23rd day of March, 1973, the Supreme Court ordered return of the remittitur from the

Eighth Judicial District Court to the Nevada Supreme Court and that the effectiveness of said remittitur be stayed for thirty (30) days after March 23, 1973. On March 29, 1973, the Nevada Supreme Court annulled its March 23, 1973 order. On July 2, 1973, the Nevada Supreme Court denied Petitioner's application for a stay of enforcement of its Judgment of January 10, 1973. [Appendix C, page 20, *infra*.]

The Nevada Supreme Court failed to look at all the stipulated facts and failed to consider them in their entirety in composite form when it considered only Stipulation No. 46, which stated that 4.27% of the total acreage in the area contended by the Defendant as being developed for urban purposes was exclusive of the real property comprising Nellis Air Force Base and other parcels of tax exempt property in said area because it is patently obvious that Stipulation No. 21 shows that the area delineated on said map and aerial photograph as being developed for urban purposes, lying outside the confines of Nellis Air Force Base, contained only 476 acres and, further, wherein Stipulation No. 45 points out that the total acreage of said 47 parcels of property owned by said 17 petitioning property owners was 160.23 acres, it is evident that the said 17 property owners did, in fact, represent more than 10% of the total acres and, in fact, represented 33.66% rather than 4.27%.

The requirements of NRS 268.582 were fulfilled and complied with in all respects, but due to the errors described above, the Court erroneously and incorrectly applied fact and law stating the requirements of NRS 268.582 were not met, only those of 268.584; further compliance with the requirements is stipulated to by the parties.

In Petitioner's Petition for Rehearing to the Nevada Supreme Court, it requested such rehearing basing such request on the fact that the Nevada Supreme Court based its decision

on patent error as to the facts of the case. Further, because of such error in regard to the facts, Petitioner raised the point that the Constitution of Nevada, Article 3, was violated by the Supreme Court's exercise and usurpation of the legislative functions of the state; that if Article 3 of the Nevada Constitution was violated, then the Ninth and Tenth Amendments of the United States Constitution were in turn violated in regard to Petitioner's citizens in that they have retained and reserved the right to promulgate the Nevada Constitution which under Article 3 clearly separates the Legislative and Judicial Departments; that other points regarding a Federal Question were raised in Petitioner's Petition for Rehearing, to-wit: violation of the Fourteenth and Fifth Amendments of the Constitution of the United States.

REASONS RELIED OF FOR ALLOWANCE OF WRIT

The federal question may properly be presented for the first time on motion for rehearing. It was not until Petitioner (Respondent below) made its motion for rehearing that it raised the federal questions involved here. The raising of such was not necessary until in its decision of January 10, 1973, the Nevada Supreme Court [Appendix A, page 15, *infra.*] through error of interpretation of facts, in effect, usurped the powers of the Legislative departments of the State of Nevada. In doing such, it invaded and violated the rights of the citizens of Petitioner City of North Las Vegas reserved, retained and given to them by the Fifth, Ninth, Tenth, and Fourteenth Amendments of the Constitution of the United States.

The Supreme Court of the United States has held in *Herndon v. State of Georgia* 295 U.S. 441, 55 S. Ct. Rptr. 794 (1935), that a federal question may properly be presented for the first time on motion for rehearing. At page 795, the Court stated:

> ". . . There is no doubt that the federal claim was timely if the ruling of the State court could not have been anticipated and a petition for rehearing presented the first opportunity for raising it. Saunders v. Shaw, 244 U.S. 317, 320, 37 S. Ct. 638, 61 L.Ed. 1163; Ohio v. Akron Park District, 281 U.S. 74, 79, 50 S. Ct. 228, 74 L.Ed. 710, 66 A.L.R., 1460; Missouri v. Gehner, 281 U.S. 313, 320, 50 S. Ct. 326, 74 L.Ed. 870; Brinkerhoff–Faris Co. v. Hill, 281 U.S. 673, 677-678, 50 S. Ct. 451, 74 L.Ed. 1107; American Surety Co. v. Baldwin, 287 U.S. 156, 164, 53 S. Ct. 98, 77 L.Ed 231, 86 A.L.R. 298; Great Northern R. Co. v. Sunburst Co., 287 U.S. 358, 367, 53 S. Ct. 145, 77 L.Ed. 360, 85 A.L.R. 254. The whole point, therefore, is whether the ruling here assailed should have been anticipated."

Not anticipated was that the Nevada Supreme Court would base its decision on misinterpretation of facts which were, in deed, in large stipulated to.

Obvious patent error was made by the Supreme Court as to the facts of the case when it stated:

A. "The record indicates that the board of county commissioners did not petition the City of North Las Vegas for either Annexations Nos. 38 or 41, and neither were there proper petitions presented of not less than 10 percent of the property owners' of land developed for urban purposes within each of the annexations so as to confer jurisdiction on the city to enlarge its own boundaries." [Appendix A, page 15, *infra*]

B. "Though the 17 property owners who signed the petitions numerically represent more than 10% of the property owners of land developed for urban purposes within Annexation No. 41, they represent *less* than 10% of the total 3749 acres of land developed for urban purposes within Annexation No. 41." [Appendix A, page 15, *infra.*]

C. "Since the petitions which were signed for Annexation No. 41 represented less than 10 percent of the total land developed for urban purposes within the area, such petitions were insufficient to confer jurisdiction on the city to proceed with Annexation No. 41 pursuant to NRS 268.582." [Appendix A, page 15, *infra.*]

D. "The absence of adequate petitions pursuant to NRS 268.582, rendered subsequent actions by the city relative to Annexations Nos. 38 and 41 wholly nugatory, and the two annexation ordinances adopted by the City of North Las Vegas are therefore invalid." [Appendix A, page 15, *infra.*]

The Court failed to look at all the stipulated facts and failed to consider them in their entirety in composite form when it considered only Stipulation No. 46, which stated that 4.27% of the total acreage in the area contended by the Defendant as being developed for urban purposes was exclusive of the real property comprising Nellis Air Force Base and other parcels of tax exempt property in said area because it is patently obvious that Stipulation No. 21 shows that the area delineated on said map and aerial photograph as being developed for urban purposes, lying outside the confines of Nellis Air Force Base, contained only 476 acres and, further, wherein Stipulation No. 45 points out that the total acreage of said 47 parcels of property owned by said 17 petitioning owners was 160.23 acres, it is evident that the said 17 property owners did, in fact, represent more than 10% of the total acres and, in fact, represented 33.66% rather than 4.27%.

The requirements of NRS 268.582 were fulfilled and complied with in all respects, but due to the errors described above, the Court erroneously and incorrectly applied fact and law stating the requirements of NRS 268.582 were not met, only those of 268.584; further compliance with the requirements was stipulated to by the parties.

Because of this, the rights of the citizens of Petitioner, City of North Las Vegas, have been violated; specifically their rights under the Ninth and Tenth Amendments of the Constitution of the United States. In retaining to and reserving to, respectively, the people, those powers not enumerated or delegated by the Constitution, the framers left to the people the right to frame state constitutions. The Nevada Constitution at Article 3 specifically separates the Legislative and Judicial departments of the state. If, indeed, the Judicial attempts to perform legislative functions, it is usurping the people's rights granted by the Ninth and Tenth Amendments of the Consti-

tution of the United States. The people framed the State Constitution under these federally retained and reserved powers. While a state Supreme Court may interpret the legislative acts, it may not act contra to such acts.

As was pointed out in *Monaco v. Mississippi*, 292 U.S. 313, 323, 78 L.Ed. 1282, 1286, 54 S. Ct. 745:

> "The doctrine of separation of powers is fundamental in our system. It arises, not from Article Three nor any other single provision of the Constitution, but because 'behind the words of the constitutional provisions are postulates which limit and control'."

The Nevada Supreme Court's usurpation of the Nevada Legislative function is violative of the United States Constitution. In 1902, the United States Supreme Court in *Dreyer v. Illinois*, 187 U.S. 71, 47 L.Ed. 79, 23 S. Ct. 28 stated:

> "A local statute investing a collection to persons not of the Judicial department with powers that are Judicial, and authorizing them to exercise the pardoning power which alone belongs to the governor of the state, presents no question under the Constitution of the United States------Whether the legislative, executive, and judicial powers of a state shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the state."

The State of Nevada, through its Constitution, has deter-

mined that the judicial and legislative departments shall be separate. Violation of this by the state judicial department is violation of the people's rights under the Constitution of the United States.

Further, the Supreme Court in its erroneous interpretation of facts has violated the rights and privileges of the citizens of the annexed areas in that they will be deprived of existence within the territorial boundaries of Petitioner and denied all the benefits and obligations arising therewith, without due process of law, as guaranteed by the Constitution of the United States.

The action of the Nevada Supreme Court, through error in interpretation of facts, and consequently as a result of the subsequent reapportionment is violative of the one man, one vote principal and the United States Constitution, Fourteenth Amendment, Section 1.

As is pointed out in 16 Am. Jur. 2d, Constitutional Law §488, page 850, 851, note 13:

> "It is by practical considerations based upon experience rather than by theoretical inconsistencies that the question of equal protection is to be answered. *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 93 L.Ed. 533, 69 S. Ct. 463."
>
> "The equal protection clause of the Fourteenth Amendment is a restriction on the state governments and operates exclusively upon them * * * The inhibitions of the Fourteenth Amendment include all of the departments of state government, including not only the political, but also the judicial."

> "The actions of state courts and of judicial officers in their official capacities, even though taken for the enforcement of private agreements, is state action within the meaning of the equal protection clause. Shelley v. Kraemer, 334 U.S. 1, 92 L.Ed. 1161, 68 S. Ct. 836, 3 A.L.R. 2d 441."

16 Am. Jur. 2d, Constitutional Law, § 491, pages 854, 855.

That to hold invalid the annexations by Petitioner is to deny to Petitioner, its citizens and the citizens of the annexed areas equal protection of the laws.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Nevada.

Respectfully submitted,

WILLIAM S. BARKER
Attorney for Petitioner
514 South Third Street
Las Vegas, Nevada
Phone: (702) 384-4012

DATED:_____, 1973

APPENDIX A

(State of Nevada - Supreme Court Opinion)

(No. 6584)

(Entered January 10, 1973)

Per Curiam:

This is an appeal from judgment entered in favor of the City of North Las Vegas, after a hearing based largely on stipulated facts, upholding the validity of two annexations, annexations Nos. 38 and 41.

The record on appeal is voluminous. Numerous errors are alleged concerning the interpretation of the applicable statutes and the procedures employed by the city. However, the interpretation of NRS 268.582[1] by the trial court, which we deem erroneous, makes it unnecessary to discuss other issues. The trial court held that the petitioning procedure set forth in NRS 268.582 was not a jurisdictional prerequisite to annexation proceedings by the city, and was instead an alternative method of requiring annexation when the city did not proceed on its own initiative. We disagree.

The courts may determine whether a municipal corporation has exceeded legislative authority in extending its boundaries. NRS 268.604; *(State v. City of Kansas City)*, 317 P.2d 806 (Kan. 1957); *(City of Anaheim v. City of Fullerton)*, 227 P.2d 494 (Cal. 1951).

---

[1] NRS 268.582 provides as follows: *"Commencement of action by governing body on receipt of petition."* Upon petition of the board of county commissioners, or upon petition of not less than 10 percent of the property owners in an unincorporated area developed for urban purposes which is approximately described in the petition, the governing body of any city shall commence action in accordance with the provisions of NRS 268.584 to 268.590, inclusive."

The Nevada legislature clearly provided in NRS 268.582 that annexation proceedings are to be "commenced" by the city upon petition of the board of county commissioners, or of at least ten percent of the property owners in an area developed for urban purposes. The initiation of annexation proceedings by the filing of petitions is the procedure employed by most of the states. *2 McQuillin,* Municipal Corporations §7.30 at 424 (3rd ed. 1966). The record indicates that the board of county commissioners did not petition the City of North Las Vegas for either Annexations Nos. 38 or 41, and neither were there proper petitions presented "of not less than 10 percent of the property owners" of land developed for urban purposes within each of the annexations so as to confer jurisdiction on the city to enlarge its own boundaries. Cf. *City of Tucson v. Garrett,* 267 P. 2d 717 (Ariz. 1954).

Annexation No. 38:

When the initial petitions were circulated by the city among the property owners, the petition contained a boundary description of approximately 1600 acres of land developed for urban purposes, which was denominated Annexation No. 39 by the City. Seventy-five property owners had initially signed the petitions proposing annexation of the 1600 acres to the City of North Las Vegas. Subsequently, the city carved out 240 acres of the original 1600 acres and proposed to annex this smaller area as Annexation No. 38. The record does not indicate that any petitions were circulated by the city, or signed by the property owners, proposing annexation of the area denominated Annexation No. 38. The 75 property owners who had signed the initial petitions represented approximately 74 percent of the land and 36 percent of the assessed valuation within Annexation No. 38. However, the petitions initially circulated by the city for Annexation No. 39 would not constitute compliance with NRS 268.582, insofar as Annexation No. 38 was concerned, since the petitions must approximately describe the unincorporated area developed for urban purposes

which is proposed for annexation. Thus, the city could not rely on the petitions describing an area approximately six times as large as that proposed for annexation in No. 38. *2 McQuillin*, supra. § 7.31 at 434.

Annexation No. 41:

Petitions which were circulated by the city for Annexation No. 41 were signed by *17* of the *55* owners of land developed for urban purposes within the area. Though the 17 property owners who signed the petitions numerically represent more than 10 percent of the property owners of land developed for urban purposes within Annexation No. 41, they represent *less* than 10 percent of the total 3749 acres of land developed for urban purposes within Annexation No. 41. NRS 268.582 provides that " . . . upon petition of not less than 10 percent of the property owners . . . ,". The statute, however, does not specify whether the percentage calculation should be based on the number of property owners, or whether such percentage should be based on the total acreage and assessed valuation of the area proposed for annexation in the petition, in much the same way that "majority of property owners" is defined in NRS 268.574 (3).[2]

The legislature must be presumed to have intended a consistent body of law within NRS 268.570 to 268.608, inclusive, 82 CJS, Statutes § 316 at 548 (1953), and inasmuch as the sufficiency of protests against annexation [NRS 268.592]

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[2]NRS 268.574 provides as follows: "*Definitions.* As used in NRS 268.570 to 268.608, inclusive:

". . .

"3. 'Majority of the property owners' in a territory means the record owners of real property:

(a) Whose combined value is greater than 50 percent of the total value of real property in the territory, as determined by assessment for taxtion; and

(b) Whose combined area is greater than 50 percent of the total area of the territory, excluding lands held by public bodies."

is determined on the basis of total acreage and assessed valuation, so must the sufficiency of petitions to initiate annexation proceedings [NRS 268.582] be based on total acreage and assessed valuation. Since the petitions which were signed for Annexation No. 41 represented less than 10 percent of the total land developed for urban purposes within the area, such petitions were insufficient to confer jurisdiction on the city to proceed with Annexation No. 41 pursuant to NRS 268.582.

The absence of adequate petitions pursuant to NRS 268.582, rendered subsequent actions by the city relative to Annexations Nos. 38 and 41 wholly nugatory, and the two annexation ordinances adopted by the City of North Las Vegas are therefore invalid.

/s/ Thompson, C. J.

/s/ Mowbray, J.

/s/ Gunderson, J.

/s/ Batjer, J.

/s/ Zenoff, J.

APPENDIX B

(State of Nevada - Supreme Court)

(No. 6584)

(ON PETITION FOR REHEARING)

(Entered March 20, 1973)

(Filed in District Court March 30, 1973)

Upon consideration of the petition for rehearing filed herein, the Court having again reviewed and being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: "Rehearing denied."

Judgment, as quoted above, entered this 20th day of March, 1973.

APPENDIX C

(State of Nevada - Supreme Court)

(Filed ORDER July 2, 1973)

(No. 6584)

Respondent's application for stay of enforcement of judgment is denied.

/s/ Thompson, C. J.

/s/ Gunderson, J.

/s/ Batjer, J.

/s/ Zenoff, J.

APPENDIX D

(Eighth Judicial District Court, Clark County, Nevada)

(Entered December 15, 1970)

(No. A 72106 and No. A 72766)

DECISION

The above two matters having been heretofore consolidated for purposes of trial concern themselves with a controversy as to the validity of certain actions of the CITY OF NORTH LAS VEGAS pertaining to alleged annexations of real property in Clark County, Nevada to the said city. The Plaintiffs SUNRISE MANOR TOWN PROTECTIVE ASSOCIATION and the COUNTY OF CLARK have made certain assertions concerning the validity of Ordinances Nos. 395 and 398 wherein there was certain territory annexed to the pleadings and stipulations as Annexation No. 38 and Annexation No. 41.

The matter was tried before the Court to a great extent on agreed stipulations as to the facts and agreed exhibits containing aerial surveys, maps, etc.

All of the parties heretofore stipulated on August 14, 1970 by lodging with the Court some 17 pages of an agreed set of facts involved in the controversy. It would be cumbersome to relate the 17 pages and 96 separate stipulated facts here, so those facts hereinafter will be referred to by the number of the stipulation.

The Court deems that the first area of consideration is whether or not N. R. S. 268.532 is an exclusive method by which a city may annex property to its boundaries or whether N. R. S. 268.584 sets forth an alternative method. In perusing the statutes contained in Chapter 268, it is clear to the Court

that N. R. S. 268.582 and N. R. S. 268.584 set forth alternative methods for annexation in cities wherein in a county containing 120,000 population or more.

After making this determination we deem it appropriate to discuss and decide the validity of the actual Annexation No. 38 and No. 41.

1. First, let us examine arguments pro and con as to the validity of Annexation No. 38. Concerning this annexation, by Stipulation No. 49, it was stipulated that N. R. S. 268.584, Subsection 1 thereof was complied with, and thus, in so far as Annexation No. 38 is concerned, it was commenced by action of the City of North Las Vegas, and complies with N. R. S. 268.584. However, the argument by the plaintiffs contend that Subsection 2 of said statute was not complied with. Subsection 2 states:

> "Not less than 60% of the area developed for urban purposes contained in not less than one geographical quadrant using the City Hall as the quadrant center and contiguous to the municipality shall be included in an annexation proposal."

It is urged upon the Court (by counsel for the City of North Las Vegas, although he states he helped draft these statutes) that this Court should ignore it in that it is totally impossible of statutory construction and has no meaning in this method of annexation.

2. In so far as Subsection 2 is concerned, in analyzing and reading what little testimony was given and from the exhibits submitted, this Court is of the opinion that Subsection 2 is incapable of an exact meaning, and therefore has no bearing in the controversy involved.

3. The next problem concerning Annexation No. 38 is conformity with the protest statutes. Plaintiffs urge upon the Court that at the time of the Public Hearing or thereafter, the statutes were conformed with. In answer to this question,

we must look to NRS 268.592 and 594 to determine whether or not there is sufficient protest to invalidate Annexation No. 38. In determining the sufficiency of the protests, we must look at Stipulations No. 56 through No. 63, and to NRS 268.592. 592 requires that unless a majority of the property owners protest such annexation either verbally at the public hearing or in writing, that the annexation is valid. What constitutes a majority of the property owners is defined in NRS 268.574, Subsection 3 which states:

> "Majority of the property owners" in a territory means the record owners of real property:
> (a) Whose combined value is greater than 50 percent of the total value of real property in the territory, as determined by assessment for taxation; and
> (b) Whose combined area is greater than 50 percent of the total area of the territory.

4. As this Court reads Stipulations No. 56 through No. 63, it is conclusive that there has not been a majority of the property owners who have filed a valid and subsisting protest.

5. It is further contended by the plaintiffs that Annexation No. 38 should be voided by reason of the fact that to allow said annexation would be to allow "Piecemeal" annexation which is claimed to be contrary to the legislative policy of the State of Nevada pertaining to annexations. Plaintiffs direct the Court's attention to NRS 268.572, Subsections 1 through 5, wherein legislative declaration sets forth legislative policy of the State concerning annexation. In reading the whole of the section, the Legislature has said through Subsection 5 that "piecemeal" annexation of unincorporated areas should be avoided, securing to residents within the area proposed to be annexed the right of protest. It seems to the Court that Subsection 5 does not necessarily mean that piecemeal annexation is absolutely void but that if piecemeal annexation is permitted,

property owners have the right to protest, and therefore, Annexation No. 38 should not be voided on this ground.

By reason of the foregoing, in so far as Annexation No. 38 is concerned, this Court is of the opinion that Annexation No. 38 is valid and that area is now incorporated within the corporate limits of the City of North Las Vegas, and that the Preliminary Injunction for that area be, and the same is hereby dissolved.

6. The Court next concerns itself with Annexation No. 41. We have heretofore stated that it is the Court's opinion that the statutes of this state as hereinabove referred to have set forth alternative methods for proceedings for annexation and we need not reiterate the court's findings in this connection. By Stipulation No. 50, it is conceded that the City of North Las Vegas commenced annexation of No. 41 by resolution pursuant to NRS 268.584.

7. The next problem concerns whether or not Annexation No. 41 complies with the statutes of this state concerning the general standards under which land may be annexed. NRS 268.580 sets forth the so-called general standards. Said statute sets forth that every annexation must comply with the requirements of Subsection 1 and *either* Subsections 2, 3, 4 or 5. By Stipulation No. 12, it is conceded that Annexation No. 41 meets Subsection 1. It is conceded by the City of North Las Vegas that Annexation No. 41 does not meet 2, 4 or 5, and we are, therefore, confronted with NRS 268.580, Subsection 3. In perusing Stipulation No. 27 and No. 28, it would seem to the Court that the parties have stipulated that Subsection (b) of 580 has been complied with but Subsection (a) is questionable. Subsection 3 states that the "Purpose of this subsection is to permit municipal governing bodies to extend corporate limits to include all nearby areas developed for urban purposes where it is necessary to include areas, which at the time of annexation, *are not yet developed* for urban purposes...". (Emphasis added).

8. It seems to the Court that by reason of this provision of Subsection 3, Subsection (a) thereof has been complied with.

9. Counsel for plaintiffs vigorously attack Annexation No. 41 on the further ground that there were sufficient protests in compliance with NRS 268.592 to invalidate the ordinance adopting said annexation. In determining whether or not there were sufficient protests, we again must look to NRS 268.574 in determining what constitutes a majority of property owners. Looking at the stipulations concerning the facts, we must look to Stipulations No. 70 through No. 81. In analyzing those stipulated facts, it occurs to the Court that whether or not the alleged protests are sufficient revolves around the validity of the protest of Col. John Anderson on behalf of Nellis Air Force Base (Department of Defense, United States Government). It is stipulated that Col. Anderson appeared at the public hearing and orally lodged a protest on behalf of the United States, stating that he had received an oral communication from a Mr. Grant Reynolds, General Counsel for the Secretary of the Air Force in San Francisco, and Mr. Reynolds told him to appear at the hearing and make a protest. Interpreting this conduct in relation to NRS 268.594, Subsection 2 (d), a protest, to be sufficient by an artificial person (Uncle Sam), must be signed by an authorized agent and accompanied by a copy of such authorization. No such authorization was lodged with the City Council of North Las Vegas at the time of the alleged oral protest or within 15 days thereafter, (the statutory time allowed), nor has it yet been received. The Court deems that such protest was rightfully declared to be invalid, and by reason thereof, the Annexation of No. 41 is not invalid by reason of protest by property owners. Thus, the Preliminary Injunction heretofore issued from this Court be, and the same is hereby dissolved, and vacated in Annexation No. 41.

IT IS THEREFORE ORDERED THAT ANNEXATIONS No. 38 and No. 41 be, and the same become a valid part of the

community of North Las Vegas, pursuant to North Las Vegas Ordinance No. 395 and Ordinance No. 398, respectively,

Counsel may prepare the appropriate Order.

DATED and DONE this 15th day of DECEMBER, 1970.

/s/ William R. Morse

DISTRICT JUDGE

APPENDIX E

(IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA)

(STIPULATION OF PLAINTIFFS AND DEFENDANTS BELOW)

(No. A 72106 and No. 72766)

STIPULATION

IT IS HEREBY STIPULATED between all of the parties in the above entitled actions, by and through their respective attorneys, as follows:

(A) That all of the Motions for Summary Judgment heretofore filed in said actions be denied.

(B) That said actions shall proceed to trial based upon the agreed Statement of Facts set forth in Paragraph C of this Stipulation, with the only areas in which testimony may be introduced being those areas set forth in Paragraph D of this Stipulation, and it is further stipulated that for the purpose of such trial the Court may consider all of the pleadings, papers, documents, responses to requests for admissions and affidavits on file in either of the above entitled actions and all of the exhibits introduced into evidence at the hearing on the County of Clark's and Town of Sunrise's Motion for Preliminary Injunction in Case No. A 72106.

(C) That the following Statement of Facts is true, and it is further stipulated and agreed that the Court may consider the same as facts in these actions, subject to the introduction of additional evidence in the areas set forth in Paragraph D of this Stipulation, and it is expressly stipulated and agreed that the Court may also draw all inferences and deductions from said facts in the same manner as when evidence is introduced in

the ordinary course of a trial, and it is further stipulated and agreed that any of the parties may object to any of the stipulated facts upon the ground that such facts are irrelevant or immaterial, but as to such facts as may be objected to as irrelevant or immaterial, the parties do agree that said facts are true, and further reserve the right to object to the relevancy or materiality of any of the facts stated in any of the affidavits.

STATEMENT OF FACTS

1. That in the latter part of May and the early part of June 1969 there were filed with the City Clerk of Defendant three (3) requests for annexation, by the respective owners thereof, each describing a separate undeveloped parcel, the aggregate assessed value of which was $47,070.00 and the total acreage of which was 121.01 acres, which said parcels lie within the area ultimately annexed to the Defendant in Annexation No. 38.

2. That at its adjourned regular meeting of June 16, 1969, the City Council of the Defendant held a policy discussion with respect to the annexation of the territory lying between the then existing city limits of the Defendant and Sunrise Mountain, including Nellis Air Force Base, and directed to the administrative staff of the Defendant to make an overall study on the feasibility of annexing all of various portions of such territory.

3. That pursuant to such directions, the administrative staff of the Defendant undertook a study on the feasibility of annexing an area which included the areas subsequently considered separately by the City Council of the Defendant as Annexations No. 38, 39, 40 and 41, together with the South Half of Section 8, Township 20 South, Range 62 East, and all of Section 17, Township 20 South, Range 62 East.

4. That in connection with such study, the Planning Analyst of the Defendant caused petitions to be circulated among the property owners in the study area in order to determine the number of property owners favoring or opposing the

annexation of said area or any part or parts thereof.

5. That for the purpose of circulating said petitions, said territory was divided into six areas and separate petitions were circulated in each area, said areas being described as follows:

> The South One Half (S 1/2) of Section 7, and all of Sections 18 and 19, in Township 20 South, Range 62 East, MDB&M.
>
> All of Section 20, Township 20 South, Range 62 East, MDB&M.
>
> S 1/2 of Section 5, Township 20 South, Range 62 East.
>
> The South One Half (S 1/2) of Section 6, and the North One Half (N 1/2) of Section 7, Township 20 South, Range 62 East, MDB&M.
>
> The North Half (N 1/2) of Section 7, the South Half (S 1/2) of Section 6, the North Half (N 1/2) of Section 8, all of Section 5 lying outside the boundaries of Nellis Air Force Base, all in Township 20 South, Range 62 East, M.D.B.&M. Nevada, and all the land lying within the present boundaries of Nellis Air Force Base situate in Township 20 South, Range 62 East, and Township 19 South, Range 62 East, M.D.B.&M., Clark County, Nevada.
>
> The South One Half (S 1/2) of Section 8, and all of Section 17, Township 20 South, Range 62 East, M.D.B.&M.

6. That, with the exception of the 3 separate annexation requests referred to in Fact 1 above, and 2 additional separate requests for annexation of parcels of property also within the area subsequently annexed to the Defendant in Annexation No. 38 received by the Defendant in early September of 1969,

all of said petitions were circulated between late August of 1969 and early October of 1969.

7. That as a result of such study, the administrative staff of the Defendant determined that the annexation of the South Half of said Section 8 and of said Section 17 was infeasible at that time and divided the remaining area into four separately numbered annexations, to-wit; Annexations No. 38, 39, 40 and 41, for further proceedings.

8. That thereafter a separate engineer's report for the extension of municipal services into the territory proposed to be annexed in each of said annexations was prepared in procedural compliance with NRS 268.578.

9. That such engineers' reports were filed with the City Clerk of Defendant at least 20 days prior to the public hearing on each of said annexations.

10. That the engineers' reports with respect to Annexations No. 38, 39, 40 and 41, except with respect to the area within the confines of Nellis Air Force Base, provide that the Defendant will extend its police and fire protection and street maintenance into each of the areas encompassed therein and will continue to provide water service to such areas as it has heretofore; that the Clark County Sanitation District, within whose jurisdiction these areas lie, presently installs and will continue to install sewer intercepter extensions in each of said areas; that garbage collection and gas, electrical and telephone services are presently furnished and will continue to be furnished by private franchised utilities; and that street extensions will be built under normal development practices by the property owners as provided for in Title 16 of the Municipal Code of the Defendant.

11. That the engineer's report with respect to Annexation No. 41 does not provide for the actual extension of municipal services into the area comprising Nellis Air Force Base for the reason that the United States Government, through the Department of Defense, is providing and will continue to provide such services within such area.

12. That the areas annexed to the Defendant under Annexations No. 38 and 41, the validity of which annexations is being challenged in these proceedings, comply with NRS 268.580(1) in that each of said areas was contiguous, to the extent of not less than one-eighth of its aggregate external boundaries, to the city limits of the Defendant at the time the annexation proceedings were instituted and that no part of such areas was included within the boundaries of any other incorporated city.

13. That, with respect to Annexation No. 38, the total number of acres annexed to the Defendant thereunder was 240 acres, which included the Los Cerritos Estates and Ponderosa Manor subdivisions, the Northland Gardens Apartment House development and Von Tobel Junior High School.

14. That, with respect to said Annexation No. 38, there was a total resident population, at the time the annexation proceedings were instituted, in said area of 1,104 persons, as determined by the methods provided for in NRS 268.608.

15. That the area annexed to the Defendant under Annexation No. 38 therefore complies with NRS 268.580 (2) in that said area had, at the time the annexation proceedings were instituted, a total resident population density of not less than two persons per acre of land included within the boundaries of such area.

16. That the area annexed to the Defendant under Annexation No. 41, taken as a whole, is not developed for urban purposes as defined in NRS 268.580.

17. That, with respect to Annexation No. 41, there are on file herein a map and an aerial photograph delineating what the Defendant contends to be the area included in such annexation which is developed for urban purposes and the area thereof not developed for urban purposes.

18. That the area delineated on said map and aerial photograph as being developed for urban purposes contains 3.749 acres;

19. That the area delineated on said map and aerial photograph as being developed for urban purposes had, at the time the annexation proceedings were instituted, a total estimated resident population, including 6,688 military personnel and their dependents assigned to, and living within the confines of, Nellis Air Force Base of 7,690 persons as determined by the methods provided for in NRS 268.608.

20. That the area delineated on said map as being developed for urban purposes therefore had, at the time the annexation proceedings were instituted, a total estimated resident population density, including military personnel and their dependents assigned to, and living within the confines of, Nellis Air Force Base, of not less than two persons per acre of land included within the boundaries of such area.

21. That the area delineated on said map and aerial photograph as being developed for urban purposes and lying outside the confines of Nellis Air Force Base contains 476 acres.

22. That the area delineated on said map and aerial photograph as being developed for urban purposes and lying outside the confines of Nellis Air Force Base had, at the time the annexation proceedings were instituted, a total estimated resident population, including some military personnel and their dependents assigned to Nellis Air Force Base, of 1,002 persons, as determined by the methods provided for in NRS 268.608.

23. That the area delineated on said map and aerial photograph as being developed for urban purposes and lying outside the confines of Nellis Air Force Base therefore had, at the time the annexation proceedings were instituted, a total estimated resident population of not less than two persons per acre of land included within the boundaries of such area.

24. That the residents of the area delineated on said map and aerial photograph as being developed for urban purposes and lying outside the confines of Nellis Air Force base require municipal services.

25. That said municipal services are presently being furnished to the residents of said area by Clark County, with respect to police and fire protection and street maintenance; by the Defendant, with respect to water service; by the Clark County Sanitation District, with respect to sewer service, and by private franchised utilities, with respect to garbage collection and gas, electrical and telephone services.

26. That the Defendant is presently furnishing supplemental water service to the area within the confines of Nellis Air Force Base.

27. That the area delineated on said map as not being

developed for urban purposes is contiguous, on at least 60% of its aggregate external boundaries, to a combination of the city limits of the Defendant and the boundary of the area delineated thereon as being developed for urban purposes.

28. That that portion of Nellis Air Force Base shown on said map and aerial photograph as a "finger" of unurbanized land contains approximately 160 acres.

29. That the area annexed to the Defendant under said Annexation No. 41 is not bounded on at least 75% of its aggregate external boundaries by the existing city limits of the Defendant.

30. That the record owners of less than 75% of the individual lots or parcels of land within the area annexed to the Defendant under said Annexation No. 41 petitioned the governing body of the Defendant to annex such area to the Defendant.

31. That none of the petitions on file with the City Clerk of the Defendant with respect to Annexation No. 38 contained a boundary description of the entire area annexed to the Defendant thereunder.

32. That all but 5 of said petitions contained a boundary description and sketch map of the area considered separately as Annexation No. 39, which included the area ultimately annexed under Annexation No. 38, and which contained approximately 1,600 acres of land.

33. That each of the petitions filed with the City Clerk with respect to said Annexation No. 38 sufficiently identified the individual lots or parcels of property the annexation of which was being requested, in that the respective

property owners in signing such petitions listed either the address, legal description and/or assessor's parcel number of their properties thereon.

34. That most of said petitions were filed with the City Clerk of the Defendant on or about September 26, 1969.

35. That at the time said annexation petitions were being circulated there were 144 property owners representing 167 parcels of property within the area annexed to the Defendant under Annexation No. 38.

36. That a total of approximately 75 property owners, representing approximately 90 parcels of property located in the area ultimately annexed under Annexation No. 38, petitioned for annexation of their property to the Defendant.

37. That the total assessed value of the real property in the area encompassed within Annexation No. 38, was for the tax year 1969-70, $1,439,144.00.

38. That the total assessed value of the 90 parcels of property owned by the Petitioning property owners was, for the tax year 1969-70, $521,753.00.

39. That the total acreage of the 90 parcels of property owned by said petitioning property owners was 162.29 acres.

40. That said 75 petitioning property owners therefore represented 36.25% of the total assessed value and 73.71% of the total acreage of the real property in the area encompasses within Annexation No. 38.

41. That at the time the annexation proceedings with respect to Annexation No. 41 were instituted there was a

total of 54 property owners in the area contended by the Defendant as being developed for urban purposes, outside Nellis Air Force Base, representing 97 parcels of property.

42. That a total of 17 property owners, representing 47 parcels of property in the area contended by the Defendant as being developed for urban purposes, petitioned for annexation of their property to the Defendant under said Annexation No. 41.

43. That the total assessed value of the real property in the area of Annexation No. 41 contended by the Defendant as being developed for urban purposes was, for the tax year 1969-70, $591,456.00, exclusive of any valuation for the real property comprising Nellis Air Force Base and other parcels of tax exempt property.

44. That the total assessed value of the 47 parcels of property in said area, outside the confines of Nellis Air Force Base, owned by the 17 petitioning property owners was, for the tax year 1969-70, $163,386.00.

45. That the total acreage of said 47 parcels of property owned by said 17 petitioning property owners was 160.23 acres.

46. That said 17 petitioning property owners therefore represented 27.62% of the total assessed value and 4.27% of the total acreage in the area contended by the Defendant as being developed for urban purposes, exclusive of the real property comprising Nellis Air Force Base and other parcels of tax exempt property in said area.

47. That the petitions with respect to Annexation No. 41 did not differentiate between the area contended by the

Defendant as being developed for urban purposes and the area not developed for urban purposes.

48. That the Board of County Commissioners did not petition for annexation of either of the areas encompassed within Annexation No. 38 or Annexation No. 41.

49. That a Resolution of Intent to annex the area encompassed in Annexation No. 38 was adopted by the City Council of the Defendant on September 29, 1969, as required by NRS 268.584 (1).

50. That separate Resolutions of Intent to annex the areas encompassed in Annexations No. 39, 40 and 41 were adopted by the City Council of the Defendant on October 6, 1969, as required by NRS 268.584 (1).

51. That a separate notice of the public hearing on each of said annexations was given in the manner and for the time required by NRS 268.586.

52. That the City Council of the Defendant approved the engineer's report with respect to Annexation No. 38 at its adjourned regular meeting held on October 13, 1969.

53. That the City Council of the Defendant approved the engineers' reports with respect to Annexations No. 39, 40 and 41 at its adjourned regular meeting held on October 20, 1969.

54. That the public hearing with respect to Annexation No. 38 was held on November 3, 1969, at which said public hearing the engineer's report with respect to said Annexation No. 38 was first explained to the people in attendance at such public hearing.

55. That separate public hearings with respect to Annexations No. 39, 40 and 41 were held on November 10, 1969, at which said public hearings the engineer's report with respect to each of said annexations was first explained to the people in attendance at such public hearings.

56. That, with respect to Annexation No. 38, a total of 113 property owners representing 124 parcels of property protested such annexation verbally and/or in writing, 92 of which protests representing 97 parcels of property were determined by the Defendant to be valid protests and 21 of which, representing 27 parcels, were determined by the Defendant to be invalid protests for various reasons.

57. That the total assessed value of the 97 parcels of property owned by the 92 protesting property owners whose protests were determined by the Defendant to be valid protests was $587,869.00.

58. That the total acreage of said 97 parcels of property owned by said 92 protesting property owners was 56.89 acres.

59. That the total assessed value of the 27 parcels of property owned by the 21 protesting property owners whose protests were determined by the Defendant to be invalid protests was $640,241.00.

60. That the total acreage of said 27 parcels of property owned by said 21 protesting property owners was 19.02 acres.

61. That therefore the record owners of real property whose protests were determined by the Defendant to be valid protests, protesting said Annexation No. 38, representing real property the combined assessed value of which was 40.85% of the total value of the property as determined by assessment

for taxation, and the combined acreage of which was 25.84% of the total area of the territory encompassed within said Annexation No. 38.

62. That the combined assessed value of $1,228,100.00 the total acreage of 75.91 acres of the real property represented by all protesting property owners in Annexation No. 38, including both the valid and the invalid protests as determined by the Defendant, was 85.34% and 31.63%, respectively, of the total value of the property as determined by assessment for taxation, and the total area of the territory encompassed within said Annexation No. 38.

63. That of the 75 property owners in Annexation No. 38 who originally petitioned the Defendant for annexation of their property, 58 subsequently protested such annexation after it had become designated Annexation No. 38.

64. That at the time the annexation proceedings with respect to Annexation No. 41 were instituted there were 134 property owners representing 187 parcels of property, excluding the real property comprising Nellis Air Force Base and real property belonging to public utility companies which is separately assessed.

65. That the total assessed value of the real property in the entire area encompassed within said Annexation No. 41 was, for the tax year 1969-70, $1,131,728.00, exclusive of any valuation for the real property comprising Nellis Air Force Base and other parcels of tax exempt property and real property belonging to public utility companies.

66. That the value at which the Clark County Assessor carried the real property comprising Nellis Air Force Base on the assessment roll for Clark County for the tax

year 1969-70 was $471,521.00 for the land only.

67. That the real property comprising Nellis Air Force Base is exempt from taxation.

68. That the total value at which the Clark County Assessor carried all of the real property, including the real property comprising Nellis Air Force Base, encompassed within Annexation No. 41 on the assessment roll for the tax year 1969-70 was $1,603,249.00.

69. That the total acreage of the entire area encompassed within said Annexation No. 41, exclusive of the real property comprising Nellis Air Force Base and other parcels of tax exempt property and real property belonging to public utilities, was 1502.26 acres.

70. That the total acreage of Nellis Air Force Base was 4,272 acres.

71. That the total acreage of the entire area encompassed within said Annexation No. 41, including the real property comprising Nellis Air Force Base, was 5,774.26 acres.

72. That a total of 79 property owners representing 96 parcels of property, exclusive of the verbal protest lodged on behalf of Nellis Air Force Base, protested said Annexation No. 41 verbally and/or in writing, 53 of which protests representing 60 parcels of property were determined by the Defendant to be valid protests and 26 of which, representing 36 parcels, were determined by the Defendant to be invalid protests for various reasons.

73. That in addition to said 36 invalid protests, the Defendant also determined that the verbal protest lodged by

Colonel John Anderson, the then Commanding Officer of Nellis Air Force Base, on behalf of the United States Government, the record owner thereof, was also invalid, for the reason that said Colonel Anderson presented or filed no written authorization to lodge such protest.

74. That Colonel Anderson in lodging such protest was acting on the verbal authorization of Mr. Grant Reynolds, General Counsel to the Secretary of the Air Force.

75. That no document has ever been presented to or filed with the Defendant which purports to have given Mr. Reynolds authority to bestow such verbal authorization on Colonel Anderson.

76. That the total assessed value of the 60 parcels of property owned by the 53 protesting owners whose protests were determined by the Defendant to be valid protests was $419,661.00.

77. That the total acreage of said 60 parcels of property owned by said 53 protesting property owners was 141.34 acres.

78. That the total assessed value of the 36 parcels of property owned by the 26 protesting property owners whose protests were determined by the Defendant to be invalid protests was $281,093,00.

79. That the total acreage of said 36 parcels of property owned by said 26 protesting property owners was 373.29 acres.

80. That therefore the record owners of real property whose protests were determined by the Defendant to be valid protests, protesting said Annexation No. 41, represented real property the combined assessed value of which was 37.81% of

the total assessed value of the property, as determined by assessment for taxation, and the combined acreage of which was 2.45% of the total area of the territory encompassed within said Annexation No. 41.

81. That the combined assessed value of $700,754.00 and the total acreage of 514.63 acres of the real property represented by all protesting property owners in Annexation No. 41, including both the valid and the invalid protests as determined by the Defendants, other than the verbal protest on behalf of Nellis Air Force Base, was 61.92% and 8.91%, respectively, of the total value of the property, as determined by assessment for taxation, and the total area of the territory encompassed within said Annexation No. 41.

82. That separate annexation ordinances with respect to each of said annexations were introduced by the City Council at its adjourned regular meeting held on November 17, 1969.

83. That the City Council of the Defendant, at its regular meeting held on December 1, 1969, determined not to proceed with Annexations No. 39 and 40, and unanimously denied the adoption of the annexation ordinances with respect thereto.

84. That the annexation ordinances with respect to Annexation No. 38 and Annexation No. 41 were duly adopted at the regular meeting of the City Council of Defendant held on December 1, 1969.

85. That the annexation ordinance with respect to each of said annexations provided that the same would become effective at 12:01 a.m. on December 16, 1969.

86. That the annexation ordinance with respect to

each of said annexations was duly published in the manner required by the City Charter of the Defendant on December 4, 1969 and December 11, 1969.

87. That the contents of the annexation ordinance with respect to each of said annexations mechanically comply with the provisions of NRS 268.596.

88. That a certified copy of the annexation ordinance and an annexation map with respect to each of said annexations were duly recorded in the Office of the County Recorder of Clark County, Nevada, on December 2, 1969.

89. That at present, real property situate within the corporate limits of the Defendant is taxed at the constitutional limit of $5.00 per $100.00 of assessed valuation and real property situate within Sunrise Manor Township as is affected by Annexations No. 38 and 41, is taxed at the rate of $4.6903 per $100.00 of assessed valuation.

90. That the annual increase in property taxes which will accrue to a typical home in Los Cerritos Estates encompassed within Annexation No. 38 upon the annexation thereof, based upon an assessed valuation of $5,900.00, will be $18.75.

91. That residents within the corporate limits of North Las Vegas are subject to city surcharge taxation upon their monthly natural gas and electric power bills.

92. That the Municipal Code of the Defendant provides for a lesser rate for water services provided by its water utility to customers within its corporate limits than that charged for water service furnished to its customers outside the corporate limits of the Defendant.

93. That the annexation of the area encompassed within Annexation No. 38 and Annexation No. 41 will result in a loss of revenue to the County of Clark in the approximate amounts of $13,500.00 and $10,600.00, respectively.

94. That said losses in revenue to the County of Clark will be offset in part by the decrease in expenditures by reason of the fact that the County of Clark will no longer be furnishing municipal services within the annexed areas.

95. That the inhabitants and property within the City of North Las Vegas and within the unincorporated areas of Clark County are subject to the public debts of the respective governmental entities.

96. That revenues derived from certain State and County imposed taxes are apportioned among the various political subdivisions within the County of Clark on the basis of their respective populations as determined by the latest federal decennial census, said census figures being based upon the geographical limits of the political subdivisions in question as of January 1, 1960, and will be readjusted based upon the geographical limits of such political subdivisions as of January 1, 1970.

D. AREAS IN WHICH FURTHER TESTIMONY MAY BE PERMITTED

That the respective parties may introduce additional testimony and proofs only in the areas as follows:

1. The reasonableness of the manner in which the Defendant proceeded in the annexations in question.

2. Whether or not the provisions of NRS 268.584(2) have been satisfied with respect to the annexations in question.

3. The validity or invalidity of the protests determined by the Defendant to be invalid protests with respect to Annexation No. 41.

4. For the possible savings in fire insurance rates which may inure to the property owners upon their properties being annexed to the Defendant in the annexations in question.

DATED this 14th day of August, 1970.

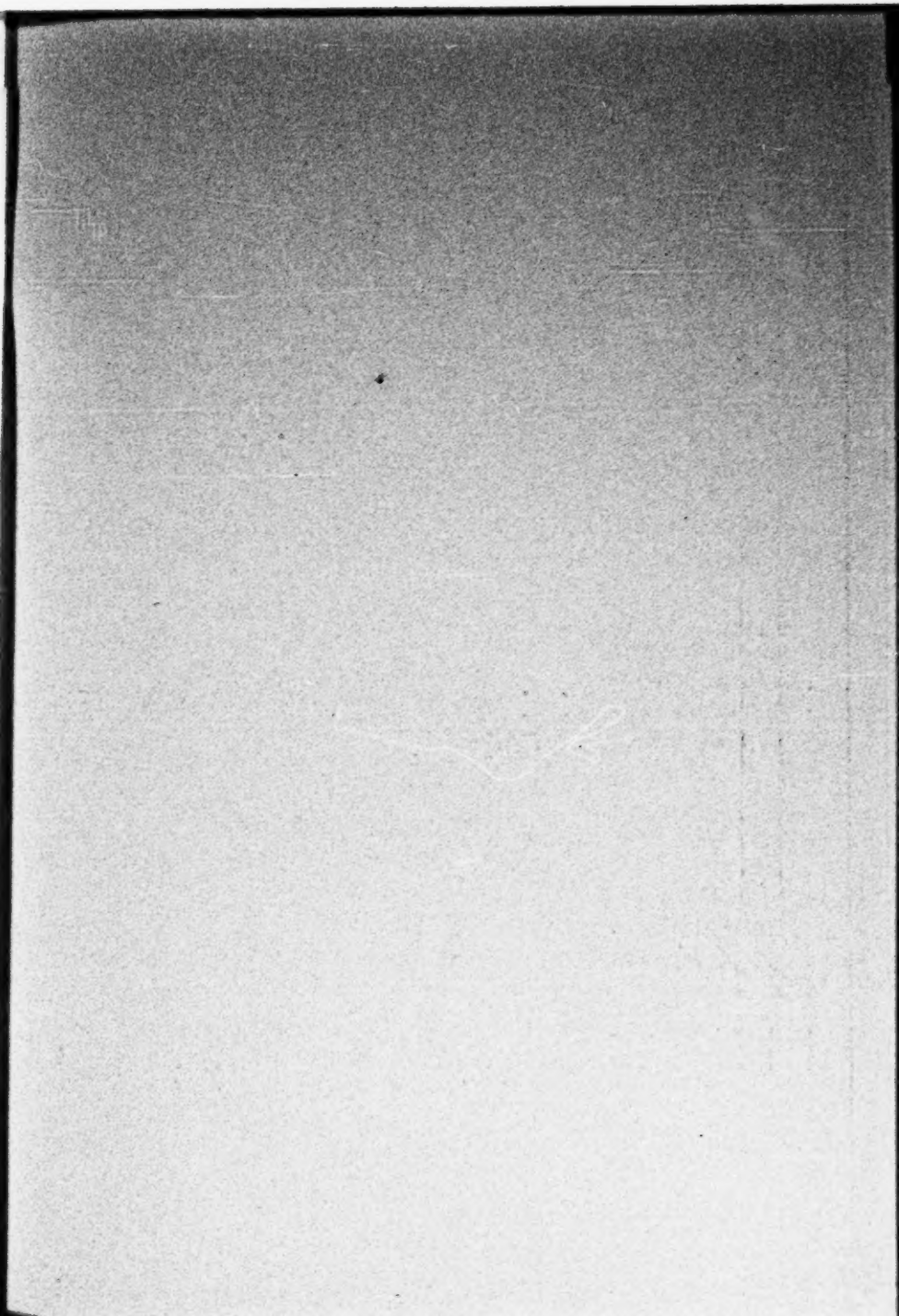
GEORGE E. FRANKLIN, JR.
District Attorney

By /s/
Attorney for COUNTY OF CLARK
& TOWN OF SUNRISE
Clark County Courthouse
Las Vegas, Nevada

/s/ George F. Ogilvie, Jr.
GEORGE F. OGILVIE, JR.
City Attorney
2200 Civic Center Drive
North Las Vegas, Nevada
Attorney for Defendant,
CITY OF NORTH LAS VEGAS

/s/ Harry J. Mangrum, Jr.
HARRY J. MANGRUM, JR.
Attorney for Plaintiffs,
SUNRISE MANOR TOWN
PROTECTIVE et al
323 Las Vegas Boulevard South
Las Vegas, Nevada

/s/ Stanley W. Pierce
STANLEY W. PIERCE
Attorney for Defendant,
C & M ENTERPRISES, INC.
300 Fremont Street
Las Vegas, Nevada



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Supreme Court, U. S.
FILED
AUG 17 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

CITY OF NORTH LAS VEGAS,

Petitioner,

v.

CLARK COUNTY and
SUNRISE MANOR PROTECTIVE ASSOCIATION,

Respondents,

SUPPLEMENTAL APPENDIX FOR PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM S. BARKER
514 South Third Street
Las Vegas, Nevada 89101
Phone: [702] 384-4012
Counsel for Petitioner

AUGUST 14, 1973

Supplemental Appendix for Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada

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APPENDIX F. 1

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APPENDIX F

(STATE OF NEVADA – SUPREME COURT)

(No. 6584)

(ORDER)

(Entered March 23, 1973)

(Filed in Nevada Supreme Court March 23, 1973)

The Motion to delay the effectiveness of the order in regard to the rehearing of the petition having been filed in the above referred to matter, and the same having been sent to the Clerk of the Eighth Judicial District Court,

IT IS HEREBY ORDERED that the said remittitur be returned by the Eighth Judicial Court Clerk immediately to the Supreme Court, and that the effectiveness of the said remittitur and its return to the Clerk of the Eighth Judicial District Court once again shall be stayed and the effectiveness of the order regarding the rehearing and the exercise of any municipal jurisdiction in the above matter by Appellants shall not begin until 30 days after the signing hereof.

Dated this 23rd day of March, 1973.

/s/ G. Thompson

CHIEF JUSTICE G. Thompson

APPENDIX G

(STATE OF NEVADA – SUPREME COURT)

(No. 6584)

(ORDER)

(Entered March 29, 1973)

(Filed in Nevada Supreme Court March 29, 1973

On March 23, 1973, the Chief Justice improvidently entered an Order recalling the remittitur heretofore issued and staying the effectiveness of the Order denying rehearing.

That Order is annulled. The remittitur shall issue forthwith.

Dated this 29th day of March, 1973.

/s/ G. Thompson
Chief Justice Gordon Thompson

/s/ John Mobray

/s/ Cameron Batjer

/s/ E. M. Gunderson

/s/ David Zenoff

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In The

SUPREME COURT OF THE UNITED STATES

******

October Term, 1973
No. 73-293

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CITY OF NORTH LAS VEGAS,

Petitioner,

vs.

CLARK COUNTY and SUNRISE MANOR PROTECTIVE ASSOCIATION, et al.,

Respondents.

******

On Petition for Writ of Certiorari to the Supreme Court of Nevada

******

BRIEF FOR RESPONDENTS IN OPPOSITION

******

HARRY J. MANGRUM, JR.
323 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Counsel for Respondents

September 12, 1973

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OPINIONS BELOW

The unreported decision of the trial judge appears as Appendix D, page 21 of the Petition. The opinion of the Supreme Court, 89 Nev. (Adv. Opn. 2) is reported at 504 P.2d 1326, and appears as Appendix A, page 15 of the Petition; the order denying rehearing appears as Appendix B, page 19 of the Petition. Subsequent orders, that of the Chief Justice below staying the effectiveness of the order denying rehearing, and an order annulling the stay order, are reprinted in Petitioner's Supplemental Appendix as Appendices F, page 1, and G, page 2, respectively. The latest order denying a stay is reprinted as Appendix C, page 20 of the Petition.

JURISDICTION

The jurisdictional statement and that of the questions presented wholly fail to invoke the powers of the United States Supreme Court under the statute relied upon by the Petitioner, 28 U.S.C. Sec. 1257 (3).

Specifically, the untimely petition seeks review of a state court decision which does not constitute a final adjudication of the controversy, does not question the validity, constitutional or otherwise, of a state or federal statute or treaty, nor is there any title, right, privilege or immunity specially set up or claimed on the part of the Petitioner under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The Nevada Chief Justice's order staying the "effectiveness" of the order denying rehearing did not toll the passage of time for the purpose of here seeking a writ of certiorari even if he had jurisdiction to grant it.

QUESTIONS PRESENTED

Whether or not a motion for a stay presented to a state court which does not raise any questions concerning its earlier rulings or denial of rehearing tolls the passing of the time within which to petition for a writ of certiorari; and, if so, whether inability on the part of counsel

who argued the cause before the challenged tribunal to sufficiently familarize himself with a voluminous file and innumerable citations to be studied because of other heavy judicial commitments state "extraordinary circumstances" justifying failure to seek an extension less than ten days before the expiration of the enlarged time period?

Whether one can claim surprise by a court's alleged misinterpretation of a written stipulation of facts before it so as to raise federal issues for the first time in a petition for rehearing?

Whether or not taxpayers enjoy any right to have their city gather revenues which it may argue on their behalf to here challenge a decreed ouster?

Are the states compelled to observe the doctrine of separation of powers, and if so, does a court brak the rule by construing a statute and applying it to the facts of a case at bar?

Whether the Nevada court has decided any substantial federal issue not previously determined here, or done so in any manner conflicting with this Court's applicable rulings?

CONSTITUTIONAL PROVISIONS INVOLVED

Not contending that any statutes are involved, the provisions of the Fifth, Ninth, Tenth and Fourteenth Amendments upon which North Las Vegas relies are set forth on page 5 of its Petition.

Also arguably involved are:

The United States Constitution Art. I, Sec. 10:

"No State shall * * * pass any* * * law impairing the Obligation of Contracts* * *"

The United States Constitution, Art. IV, Sec. 4:

"The United States shall guarantee to every State in this Union a Republican Form of Government. . ."

The Nevada Constitution, Art. 3, Sec. 1:

"The powers of the Government of the State of Nevada shall be divided into three separate departments, -the Legislative,- the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted."

The Nevada Constitution, Art. 6 Sec. 4:

"The supreme court shall have appellate jurisdiction in all cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceed three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. The court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise

of its appellate jurisdiction...."

STATUTES INVOLVED

The Petitioner is not contending that there are any federal or state statutes having a bearing on the issues it attempts to raise. Respondents suggest that Nevada Revised Statutes (NRS) 268.574(3) footnote 2 at page 17, and 268.582 reprinted as footnote 1, at page 15, to Appendix A of the Petition, the state supreme court's decision, are involved, but since they are reproduced by the Petitioner, do not do so here.

STATEMENT OF THE CASE

The respondent property owners, hereinafter referred to as the taxpayers, to distinguish them from the co-respondent Clark County, and the unincorporated Town of Sunrise, (more commonly known as Sunrise Manor) became plaintiffs below, due to their concern over the issue or the County's standing to sue.

The correct names of the respondents, on behalf of whom this brief is submitted are: SUNRISE MANOR TOWN PROTECTIVE ASSOCIATION, a Nevada corporation, JOHN N. CATHA and MARGARET J. CATHA, DONALD L. REAMER and AMELIA G. REAMER, MONTE L. SCHLARMAN and PATRICIA SCHLARMAN, DURELLE E. BRANNON and VIVIAN G. BRANNON, JAMES E. PAGANO, JOSEPH P. DeMARCO and MIRIAM DeMARCO, WILLIAM F. FULFORD and MARY F. FULFORD.

In their separate action, filed December 15, 1969, they challenged Annexation No. 38 as void for lack of any petition describing the area to be annexed; attack-

ed Annexation No. 41, containing mostly undeveloped lands (between the former city limits) and Nellis Air Force Base, as being also void because it met none of the statutory criteria, the city planned to furnish no governmental services to the area it described as being urbanized (Nellis Air Force Base) and had been annexed contrary to the valid protests of a majority of the property owners (partially by means of the City's later "ruling" that the Base Commander's protest was invalid). Their third cause of action alleged that both annexations were under taken for the sole purpose of increasing the City's tax revenues from real and personal property taxes, utility consumer taxes, and liquor, cigarette and sales taxes which the state distributes to the incorporated cities on a per capita basis, and thus wholly void for that reason alone. The taxpayers, on behalf of themselves and all other members of the class similarly situated prayed for declaratory relief ruling the annexations invalid.

After the trial judge ruled against them and vacated the preliminary injunction, the plaintiffs below took their appeal, which was argued on December 17, 1971, and on January 10, 1973 the Nevada Court entered its per curiam ruling sustaining their contentions.

Subsequently, the court recalled its remittitur to allow the city to submit a late motion for rehearing on February 1, 1973; in which it urged that the state justices had mistaken the facts printed in the stipulation (Appendix E, at pp 27-45 of the Petition) and to its surprise, the decision that NRS 268.582 did not impliedly

grant it a power to annex on its own violation had violated the doctrine of separation of powers, the "one man-one vote" principle of the Fourteenth Amendment, would deprive it and its citizens (and those in the areas from which ousted) of tax revenues in some way contrary to the state and federal Constitutions, reduce their income from federal "revenue sharing" contrary to the United States Constitution, and by depriving North Las Vegas, its citizens and those in the territories from which it was ousted of "all the benefits and obligations" of being contained under City Hall's jurisdiction had deprived all concerned of "rights and privileges" guaranteed by the state constitution and the Fifth Amendment of the United States Constitution "without due process of law."

The state court denied rehearing on March 20, 1973. On March 23, 1973, the North Las Vegas' City Attorney, move ex parte for a stay order, which the Chief Justice granted (Supp. App. F, p.1). Because of its important relevancy to the issue of timeliness, the taxpayers have reproduced the City-Petitioner's motion and supporting affidavits as Appendix 1, at pp 22, infra.

On March 26, the taxpayers, joined by the County, filed a motion to "immediately and forthwith" vacate the stay order as having been "improvidently entered" or alternatively for an immediate hearing on the grounds that the City's motion was fatally defective for lack of points and authorities and proof of service on opposing counsel as required by that court's Rule 26, that the Nevada Court had been divested of jurisdiction on issuance of its remittitur on March 20, because no stay could issue

after rehearing was denied for lack of an appeal pending, and that the moving papers stated no cause for a stay. By telephone, the state court almost instantaneously ordered all counsel to appear before it on the morning of March 29, and after a brief hearing en banc, granted the motion. (Supp. App. G, p2)

On April 2, 1973, the taxpayers filed a motion in the trial court to compel the City, Petitioner here, to account and pay back the illegally gained tax revenues to themselves or the other local cities and for final judgment. After numerous continuances, argument has been set for September 17, 1973.

On June 22, 1973, the taxpayers' counsel's secretary was served with papers dated June 21, notifying that the City-Petitioner would here personally apply for a Stay Order on the 25th; and on June 23, (under postmark of the 22nd) received duplicates in the mail. However, upon presenting himself at the clerk's office here on Monday, taxpayers' counsel discovered that submission of the motion for a stay had been refused as untimely, but that opposing counsel had been allowed to submit an application for an extension of time to petition for a writ of certiorari. Due to the unfamilarity with motion practice here, by the time papers in opposition were prepared, an order extending time to August 17, 1973 had been entered. (United States Supreme Court No. A-1284).

Due to its possible bearing on the grounds for the issuance of tardy applications for an enlargement of time to here seek a writ of certiorari, the taxpayers

ask the Court to take notice of the papers the Petitioner filed here under its No. A-86, on July 10, 1973, and advise that the reason for the change of City Attorneys was due to the fact that, after an intensive campaign the former counsel was elected and took office as Las Vegas City Attorney on July 1, at which time the Petitioner elevated his deputy to the position.

ARGUMENT

Picking and choosing from the Stipulated Facts (App. E of Petition, pp 27-45) to select only those it thinks favorable to its contention that the challenged tribunal was guilty of erroneous interpretation that resulted in a violation of rights allegedly bestowed upon unnamed, unjoined third parties, the petitioning municipal corporatinn asks this Court to exercise jurisdiction to review and upset a state court's interpretation of state statutes dealing with a subject purely of state power, without bothering to claim that the statutes involved in any way impinge upon a recognized right of itself or the anonymous third parties or citing a single precedent for the perpetration of such violence upon the federal system.

The Nevada decision is, as a matter of the general American law of municipal corporations, as perfectly correct and irreversable as the specious petition is grossly untimely and wholly inadequate to invoke the jurisdiction of this court.

THE APPLICATION FOR AN EXTENSION OF TIME WAS INADEQUATE AND TOO LATE.

Too wearied of the repeated frenzy cause by their better financed opponent's

ex parte state and federal appellate motion practice to voice a lengthier protest, the respondent-taxpayers will only direct attention to the papers submitted for an extension of time, without either actual notice or proof of service, through what must have been some clerical oversight or mistake, for whatever it may be worth in terms of the possible applicability of Rule 50 (2)a, and address their discussion to the jurisdictional, and other merits, of which none are apparent.

According to our calculations, the petitioner's application for additional time, submitted here on June 23, 1973, was then five days too late.

Assuming for the sake of argument, that the stay granted by Chief Justice Thompson had operated to toll the passage of time, the reasons given, a voluminous file "with extensive legal briefs with innumerable citations to be studied" by counsel too busy with "heavy judicial commitments" to get acquainted with a case which he argued to the questioned court and later submitted to it a 19 page brief for rehearing, are altogether too common to the type of controversies reviewed here to justify failure to so apply in less than ten days before the expiration of a purportedly enlarged period of time, unless the emasculation of the "extraordinary circumstances" requirement of Rule 34(2) is a desirable goal. If a case is important enough to merit notice here, the advocate owes a minimum duty to at least check the rules and count pages on his busy calender; and at least one member, the late Justice Frankfurter, was of the view that he has an affirmative duty to timely prepare

if he desires to bring it here. Carter v. United States, 100 L. Ed. 1508, 1509, 75 S. Ct. 911 (1955).

The responding taxpayers emphatically deny that the time was enlarged. The reasons given for "staying the effectiveness of the order denying rehearing" by the defeated city, set forth in the Appendix (1, pp 22-25 infra) did not in any way involve a question as to any point decided either in the original opinion or on the motion for rehearing. Therefore, even if the questioned court had not unanimously sustained the strong objections of the taxpayers, joined by the County, and "annulled" the stay order on March 29, 1973, the stay had no effect on the passage of jurisdictionally vital time. Department of Banking v. Pink, 317 U.S. 264 266-267 (1942).

THE MATTER HAS NOT BEEN FINALLY ADJUDICATED

The per curiam opinion of the state court used the single word "reversed". Under Nevada case law, the effect is to place the parties back before the trial court in the same position they were in immediately prior to the decision overturned on appeal. Guisti v. Guisti, 44 Nev. 437, 196 Pac. 337 (1921); Canepa v. Durham, 63 Nev. 245, 166 P.2d 810 (1946).

Presently pending there is the plaintiff taxpayers' motion, filed April 2, 1973, to force a return and/or redistribution to "all others similarly situated" and the other affected local cities of the taxes and revenues unlawfully received by the

defendant petitioning here, and a· final declaration of rights and judgment upon the remittitur. After a number of lengthy continuances granted the defendant city, the trial judge who must straighten out the mess created by his predecessor's decision has calendered argument to begin on September 17, 1973. The matter is sufficiently complicated, and so many private and public entities involved, that the prospect of further appellate proceedings is not nearly as remote as the plaintiffs' wish.

It is not interlocutory, but final, adjudications to which this Court must devote its time under the statute relied upon by the petitioner to invoke its powers, even though the major issues have been decided and all that remains is to determine damages. Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62 (1948)

NO WRONGLY DECIDED OR UNANSWERED FEDERAL QUESTION IS POSED

The petition is so frivolous as to verge on the bizarre.

These questions it asks: does a state court, repetitively through erroneous interpretation of written facts, in "miscontruing" a statute so violate the doctrine of separation of powers as to infringe the rights or powers reserved by the Ninth and Tenth Amendments to the people; by reducing a city's size, deprive its citizens and those from where it is ousted, of revenues and the right to vote in its elections, so unfairly and unlawfully as to be tantamount to denying them equal protection under the Fourteenth Amendment,

and the rights and privileges guaranteed by the Fifth Amendment?

To all these interrogatories, the decisions of this Court, as well as virtually all of the states, have already answered with a resounding No.

The Ninth Amendment on its face, is totally inapplicable to the petitioner's case, since it does no more than specify a rule of strict construction of the United States Constitution against federal powers and in favor of themselves, and does not apply to the states. The Tenth Amendment provides that powers not granted the United States, nor prohibited by the Constitution to the States, are fully retained by either the states or their citizens-and fully recognized the historic principal, much older than that document, that the states are governments endowed with all the powers any government can have, except as limited by either their own or the federal constitutions.

In Article 3 of the Nevada constitution, the document by which the people, the source of all the powers of such a fiction as is that, or any state, exerted their sovereignty, they adopted the doctrine of separation of powers.

In Article 6, the Nevadans vested "The Judicial power of this State" in a system of courts, and in Sec. 4 vested full appellate, and quite a bit of original, jurisdiction, in their supreme court. That statewide elected body, when it sits, exercises the power of all the people, the same people who in smaller numbers elect state senators and assemblymen from smaller areas.

The answer to the proposition that in exercising its power to decide a specific case before it a court which construes a statute in a manner the losing litigant alleges to be erroneous, thereby violates the doctrine of separation of powers is necessarily as simplistic and trite as the question. How can any court decide a controversy in which the defeated appellee bases its entire case upon its interpretation of a specific statutory section without having the power to construe the statute in its favor, or misconstrue it against it?

The point is academic here. The doctrime of separated legislative, judicial and executive powers is not an essential element of a republican form of government or of the limitations on the states contained in the Fourteenth Amendment, and their courts may mischievously misconstrue their own statutes without federal intervention. Dreyer v. Illinois, 187 U.S. 71, 83-84 (1902). This Court will not correct a state court's misconstruction of a local municipal annexation law to preserve the state legislature's plenary powers over municipal corporations and other political subdivisions from its judiciary even on the complaints of a human property owner that it must do so to preserve a republican form of government. Forsyth v. Hammond, 166 U.S. 506, 518-519 (1897).

If real voters were here petitioning on behalf of themselves and all other "Negroes similarly situated", that a state legislature had nonsenically redrawn a city's limits for the purpose of denying them their Fifteenth Amendment rights, they would be attentively heard, but barring

such a travesty, the power of the state legislatures and courts over their lesser political bodies is well nigh absolutely total. Gomillion v. Lightfoot, 364 U.S. 339 (1960).

Smaller political entities can not be heard to plead alleged rights of its voters, especially not as a limitation on higher state authority, so as to retain them within local boundaries, for to allow it would be to slowly commit "sovereigntial suicide" by creating "states within the state". Pershing County v. Humboldt County, 43 Nev. 78, 871-88, 181 Pac. 960, 962, reh. den. 183 Pac. 314 (1919).

To the "innumerable" rulings that only the injured parties may complain of the violation of constitutional, or other, rights no special exception is granted to cities to allow them to urge the rights of their taxpayers to have them receive revenues. Hunter v. Pittsburgh, 207 U.S. 161, 178-179 (1907). Nor will a group of its taxpayers actually present before the Court be heard to argue that their city has a "right" to income protectable here. New Orleans v. New Orleans Waterworks Co., 147 U.S. 79 (1891).

The Court will not yield in its deference to local law on a city's contention that diminution of its income by passage of a law has impaired its contractual obligations. Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394 (1919)

Municipal corporations have no constitutional "right to revenue" for the courts to protect. State ex rel Adams v. Crawford, 99 Conn. 378, 121 Atl. 800 (1923); Re Heineman, 201 Wis. 484, 230 N.W. 698 (1930).

Forty years ago this Court had before it a hotly contested case, brilliantly argued by able advocates, wherein a municipality complained of a recently enacted law exempting a commuter railroad from its taxation as impairing, not only the obligation of its contracts, but every other right conceivable or claimable, and in a decision written by Justice Benjamin Cardozo held that there was no right, title, interest, immunity or privilege held or enjoyed by cities under the Federal Constitution which the Court would protect from the states. Williams v. Baltimore, 289 U.S. 38, 40 (1933).

A few years later, taxpayers brought here for review a federal decision in favor of municipal bond creditors compelling them to continue paying taxes to an ousted city on the theory that the municipality had exercised "de facto" jurisdiction over their noncontigous lands in which they had earlier acquiesced without protests, of taxes or otherwise, and thus were estopped. This Court, first stating that it was unquestionably bound to apply the local law gleaned from Florida statutes or decisions, rigidly adhered to the state cases, discovered that under them there could be no de jure annexation of noncontiguous lands under the statutes, and finding the annexation void, held that no amount of taxpayer consent could substitute for a statutory grant of power and reversed. Ocean Beach Heights, Inc. v. Brown-Crummer Invest. Co., 302 U.S. 614 (1938).

Probably no better illustration of how extremely well settled the point is can be cited than the case of Smith v. City of

Winter Haven, 18 So.2d 4 (Fla. 1944) in which, although a federal judgment compelled the city to continue taxing a non-contiguous black neighborhood from which the state court had ousted it, the court reversed the trial judge's denial of an injunction, all but thumbing its nose at the Fifth Circuit Court of Appeals.

The power of the states over their political offspring is so pervasive that where found to be in accordance with Kentucky law by the state court, this Court could find no Constitutional point upon which to disturb the decision sustaining Louisville's annexation of a Naval Ordnance installation. Howard v. Commissioners, 344 U.S. 624 (1953). See also Wichita Falls v. Bowen, 143 Tex. 45, 182 S.W.2d 695 (1944) (Sheppard Field); County of Norfolk v. City of Portsmouth, 186 Va. 1032, 45 S.E.2d 136 (1947) (Norfolk Navy Yard).

But, when a city of less than 4,000 decided to boost its population by 12,000 so as to obtain a larger share of tax revenues distributed on a per capita basis by means of annexing SAC headquarters and the major part of the free world's nuclear deferrent at Offut Air Force Base, in a state where the local court had four times earlier ruled annexations for revenue purposes only "invalid" a federal injunction may issue. United States v. City of Bellevue, Nebraska, 334 F. Supp. 881 (D.C. Neb. 1971); aff'd 474 F.2d 473 (8th Cir. 1973); petition for cert. filed (U.S. May 26, 1973, No. 72-1591).

Such municipal imperialism is also "invalid" in Nevada, because the effect of annexation for taxation is to deprive

property owners of their property without due process of law and thus it is unconstitutional and void. State ex rel Bibb v. City of Reno, 64 Nev. 127, 118 P.2d 366 (1947).

An essential element of due process clauses, in whatever constitution found, being proper notice to those having rights to be affected, it is not startling that the statutory requisites of property owner petitions for annexation are universally deemed to be jurisdictionally imperative, and the right of protest (even of the United States Air Force) "jealously guarded". States ex rel Quimby v. City of Reno, 71 Nev. 144, 156-157, 282 P.2d 1071, 1077 (1955).

One surprised by an unanticipated appellate decision suddenly impairing important federally protected rights might properly raise the issues for the first time in a petition for rehearing-but to the contention that "misinterpretation of facts" stipulated was a thought that never should have earlier crossed the municipal mind the respondent taxpayers suggest that a casual reading of all the stipulated facts with eyes unblinded by greed will indicate that the state justices gave the case as correct a construction in fact as they did in law, after they finally reached agreement as to just which of the "Numerous errors" to correct. (App. E of Petition, pp. 27-45)

Assuming, but in no way conceding, that the state court did "misinterpret" the written facts, nevertheless, its decision on even erroneously found facts of a case involving points of local municipal law

is not reviewable here, and its word is final. Williams v. Weaver, 100 U.S. 547 (1880).

The respondent taxpayers have no more quarrel with the principle that a court decision amounts to state action within the meaning of the Fourteenth Amendment quoted by the petitioner from 16 Am.Jur.2d, than they do with the ruling in Monaco v. Mississippi, 292 U.S. 313 (1934) that the Eleventh Amendment prevents federal courts from entertaining actions brought by foreign principalities against states. But the protection of the Fourteenth Amendment is extended only to human beings and the private corporations in which they have property interests, and since the petitioner city did not produce in evidence before the trial or appellate court either its certificate of birth or naturalization, the co-equal judicial branch of its parental state government had every right to commit infanticide, devouring its offspring even without due process or equal protection of the laws.

It suggests that a judicial decision ousting it for wholly failing to comply with the law, in its haste to fatten its coffers, upon the protest of those intended to suffer the extortion, by granting its victims the relief sought, because it excludes them from voting in its elections, has effected a political reapportionment contrary to the "one man-one vote" principle. The contention isn't worthy of an answer, but respondent-taxpayers who fought on behalf of themselves and "all others similarly situated" suggest that to recognize such an exception in the law of municipal annex-

ations is to wholly destroy it, and lead to the establishment of "mini-sovereigns" within sovereigns. Pershing County v. Humboldt County, supra. Free people are feee to move to whatever city they find distasteful. Secondarily, the effect of the ouster is not to diminish the strength of voters remaining within the city, but to add weight to their ballots.

CONCLUSION

In its grossly untimely petition, far too late to invoke the jurisdiction of this Court to review a case at an intermediate stage, the City of North Las Vegas', as brazenly here as below, would have this highest Court first do violence to the federal system in order to then do violence to virtually the entire body of law pertaining to municipal corporations as well as its own well settled "innumerable citations", all in the name of protecting a wholly nonexistent" right to revenue."

The petition doesn't even bother to question the validity of any state, or the arguable applicability of any federal, statute and wholly fails to show the infringement of any "title, right, privilege or immunity" set up or claimable under federal law, Constitutional or otherwise, on behalf of itself or the annonymous third parties it contends should have it kept in

style to which it would like to be accustomed.

Certiorari must be denied.

Respectfully submitted,

HARRY J. MANGRUM, JR.
Attorney for Respondents
SUNRISE MANOR TOWN PROTECTIVE ASSOCIATION, JOHN N. CATHA, et al.

September 12, 1973

APPENDIX I

(SUPREME COURT - STATE OF NEVADA)
(No. 6584)

(MOTION TO STAY DATE OF ORDER DENYING REHEARING ON PETITION)

(Filed March 23, 1973)

COMES NOW, Respondent-Petitioner, CITY of NORTH LAS VEGAS, and moves this Honorable Court, pursuant to Supreme Court Rules 34 (4), (5) and (7) and 26, to stay the effectiveness of the order in the above referred to matter denying a re-hearing..the Remittitur of the same having been mailed by the Clerk of the Supreme Court to the Clerk of the Eighth Judicial District Court on or about the 21st day of March, 1973, in order that a convenient coordination and transition of municipal jurisdiction and the exercise thereof may occur insofar as the subject matter of this case is concerned.

This motion is based on the Affidavits filed herewith and on the necessity for such time in which to properly achieve such transition.

DATED this ___ day of March,1973.

CARL E. LOVELL, JR.
City Attorney

/s/ Carl E. Lovell, Jr.
Attorney for Respondent-Petitioner

APPENDIX I

(SUPREME COURT - STATE OF NEVADA)

(No. 6584)

(AFFIDAVIT)

(Filed March 23, 1973)

STATE OF NEVADA)
COUNTY OF CLARK) ss:

IRENE PORTER, being first duly sworn, deposes and says:

That she is the duly appointed Planning Director of the City of North Las Vegas, Nevada, and in such capacity is responsible for the planning, applications for use permits, variances, zoning changes and reviews all applications for business licenses in order that they meet with Planning requirements for the City of North Las Vegas;

That due to the number of businesses and applications for permits, variances, and zoning changes, it would take at least thirty (30) days in which to properly, orderly and conveniently work with the Planning Director of Clark County, Mr. Jay Downey, in order to make the transition of all those licenses, records and applications which have come about in the last twenty-seven (27) months, in order to insure an orderly continuance of government and a system of Planning management.

That therefore, your Affiant feels the necessity that thirty (30) days or as

much time as allowable to make such changes and transition is in the best interests of orderly and sound government.

DATED this 22nd day of March, 1973.

/s/ Irene Porter

IRENE PORTER, Planning Director, City of North Las Vegas, Nevada

SUBSCRIBED and SWORN TO before me this 22nd day of March, 1973.

/s/ JEAN TRUEX

NOTARY PUBLIC

(S E A L)

APPENDIX I

(SUPREME COURT - STATE OF NEVADA)

(No. 6584)

(AFFIDAVIT)

(Filed March 23, 1973)

STATE OF NEVADA)
COUNTY OF CLARK) ss:

ROLAND S. TATE, being first duly sworn deposes and says:

That he is the Superintendent of the Building Department of the City of North Las Vegas, and that as a result of the Order Denying the Rehearing on Petition in the above matter, in order to make proper transfer of records and license applications, for which he is responsible for the City of North Las Vegas, to the Building Department of Clark County, a period of time would be necessary in order to avoid confusion and utter disruption of both his record department and that of Clark County, and that therefore, your Affiant would appreciate a sufficient amount of time in which to be able to make such transfer of records for the convenience of both public entities and the public.

DATED this 22nd day of March, 1973.

/s/ Roland S. Tate

ROLAND S. TATE
Superintendent of Building
City of North Las Vegas, Nevada

SUBSCRIBED and SWORN TO before me
this 22nd day of March, 1973.

/s/ JEAN TRUEX (S E A L)
NOTARY PUBLIC

PROOF OF SERVICE

STATE OF NEVADA)
COUNTY OF CLARK) ss:

HARRY J. MANGRUM, JR., being duly sworn, deposes and says:

That on the ____ day of September, 1973, I mailed three (3) copies of the foregoing Brief in Opposition to Writ of Certiorari to:

William S. Barker
514 South Third Street
Las Vegas, Nevada 89101
Counsel for Petitioner

Roy A. Woofter
District Attorney
Attn: Charles L. Garner
Chief Deputy of Appeals
Clark County Courthouse
200 East Carson Avenue
Las Vegas, Nevada 89101

Further, that postage was fully prepaid, and that there is regular communication by the United States Mails between the place of posting and the place so addressed.

_____

HARRY J. MANGRUM, JR.

SUBSCRIBED and SWORN to before me this ____ day of September, 1973.

_____

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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1973

CITY OF NORTH LAS VEGAS,

Petitioner,

vs.

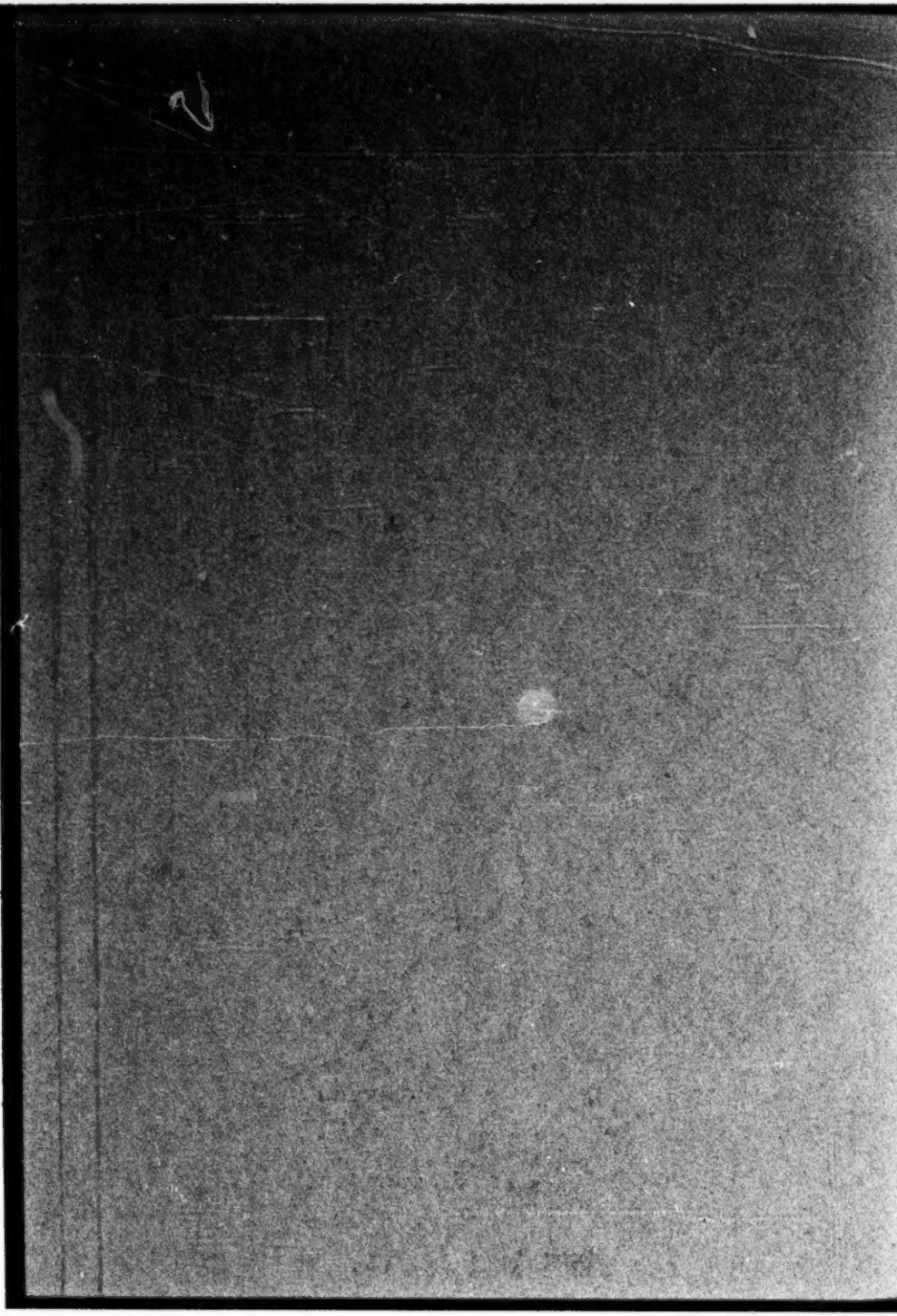
CLARK COUNTY and
SUNRISE MANOR PROTECTIVE ASSOCIATION,

Respondents.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

ROY A. WOOFTER
CHARLES L. GARNER
Clark County Courthouse
200 East Carson Avenue
Las Vegas, Nevada 89101
Phone: [702] 386-4011
Counsel for Respondent
Clark County

SEPTEMBER 12, 1973



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Counsel for Respondent
Clark County

SEPTEMBER 12, 1973

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In The
SUPREME COURT OF THE UNITED STATES
****
October Term, 1973
No. 73-293
****
CITY OF NORTH LAS VEGAS,
Petitioner,

vs.

CLARK COUNTY and
SUNRISE MANOR PROTECTIVE ASSOCIATION, et al.,
Respondents.
****
On Petition for Writ of Ceriorari to
the Supreme Court of Nevada
****
BRIEF FOR RESPONDENTS IN OPPOSITION
****

OPINIONS BELOW

Respondent, Clark County, adopts Petitioner's statement relative to the Opinions Below.

JURISDICTION

Respondent contends that there is no jurisdiction of this Court under 28 U.S.C. Section 1257 (3).

The Respondent, Clark County, contends that no federal questions were at any time raised in the proceedings below, also no federal questions were briefed in the proceed-

ings below, also no federal questions were briefed in the proceedings below and federal questions were not necessary to the Opinion as decided by the Trial Court.

Federal Supreme Court's dismissal of appeal from state court, for want of substantial federal question, amounts to affirmance on merits. Port Authority Bondholders Protective Committee v. Port of New York Authority, D.C. N.Y. 1967, 270 F.Supp. 947, affirmed 387 F.2d 259.

Federal Supreme Court decision dismissing appeal for want of substantial federal question was a decision on merits. Wyley v Warden, Md. Penitentiary, D.C. Md. 1966, 254 F.Supp. 727, affirmed 372 F.2d 742, certiorari denied 88 S. Ct. 121, 389 U.S. 863, 19 L.Ed.2d 131, rehearing denied 88 S.Ct. 484, 389 U.S. 997, 19 L.Ed. 2d 500.

Issue whether federal question was sufficiently and properly raised in state courts is itself ultimately a federal question, as to which Supreme Court is not bound by decision of state courts. Street v. New York, N.Y. 1969, 89 S.Ct. 1354, 394 U.S. 576, 22 L.Ed.2d. 572, on remand 302 N.Y.S. 2d 848, 24 N.Y.2d 1026, 250 N.E. 250.

Petitioner could not raise, for time on Writ of Certiorari, contention of alleged unconstitutional application of N.J.S.A. 24:4-37(b), pertaining to disposition of juvenile offenders, where state courts had had no opportunity to pass upon it. Monks v. New Jersey, N.J. 1970, 90 S.Ct. 1563, 398 U.S. 71, 26 L.Ed.2d 54.

When highest state court has failed to pass upon federal question, it willbe assumed that omission was due to want of proper presentation in state courts, unless aggrieved party in United States Supreme Court can affirmatively show the contrary. Street v. New York, N.Y. 1969, 89 S.Ct. 1354, 394 U.S. 576, 22 L.Ed.2d 572 on remand 30 N.Y.S . 2d 848, 24 N.Y.2d 1026, 250 N.E.2d 250.

If issue was not presented to state courts in such manner that it was necessarily decided by highest state court when it affirmed conviction, United States Supreme Court would have no power to consider issue. Id.

QUESTIONS PRESENTED

Respondent will note that no federal question was involved in the proceedings below and contends that the attempts of the Petition to inject a federal question for the first time on its Petition for Writ of Certiorari is impossible; however, for the convenience of the Court, the Respondent will use the form of the Questions Presented.

CONSTITUTIONAL PROVISIONS INVOLVED

Respondent adopts Petitioner's wording as contained in their Petition.

STATEMENT OF CASES

Respondent will adopt the Petitioner's wording as to the Statement of the Cases.

NO REASONS EXIST FOR ALLOWANCE OF WRIT

The Respondent calls the Court's attention to the fact that the opinion of the Nevada Supreme Court merely held that in every attempted annexation that there had to be compliance to NRS 268.582; that a municipality which had started an annexation, could not take a larger annexation, and, when it failed, to seek to annex only a part thereof. The smaller area annexation was, in fact and in law, a new annexation wherein there had to be compliance from the commencement with NRS 268.252. The Supreme Court went on to find NRS 268.582 as the jurisdictional requirement for any annexation.

It is the Respondent's contention that there is not even a hint of a federal question.

It is further noted that there is not a single case cited which involved an annexation problem and that the Petitioner cited only generalized rules, each devoid of particular fact application involved.

It is the position of the Respondent that the Supreme Court of the State of Nevada was correct when it found N.R.S. 266.582 to be a jurisdictional requirement for any annexations. Further, to say that a Court which holds that a section of a Statute must be complied with and to contend that this amounted to a violation of a constitutional privilege is sheer nonsense.

The Supreme Court will review a decision

of a state court only where it affirmatively appears from record that a federal question was presented to the highest state court having jurisdiction and that its decision on the federal question was necessary to the determination of the cause, and where decision might have been either on a state ground or on a federal ground and state ground is sufficient to sustain judgment, the Supreme Court will not undertake to review it, but if the independent state ground was not a substantial or sufficient one, it will be presumed that the state court based its judgment on the federal question, and the Supreme Court will then take jurisdiction. Durley v Mayo, Fla. 1956, 76 S.Ct. 806, 351 U.S. 277, 100 L.Ed. 1178, rehearing denied 77 S.Ct. 22, 352 U.S. 859, 1 L.Ed.2d 69.

The United States Supreme Court will not review judgments of state courts that rest on adequate independent state grounds. Dixon v. Duffy, Cal. 1951, 72 S.Ct. 10, 342 U.S. 33, 96 L.Ed. 46.

The Supreme Court has no jurisdiction to review a state court decision unless it appears affirmatively from the record not only that a federal question was presented for decision to highest court of state having jurisdiction, but that its decision of federal question was necessary to determination of the cause, that federal question was actually decided, or that judgment was actually decided, or that judgment as rendered could not have been given without deciding it. Southwestern Bell Telephone Co. v State of Oklahoma, Okl. 1938, 58 S.Ct. 528, 303

U.S. 206, 82 L.Ed. 751. See also, People of State of New York ex rel. Consolidated Water Co. of Utica v Maltbie, N.Y. 1938, 58 S.Ct. 506, 303 U.S. 158, 82 L.Ed. 724.

No substantial federal question was presented on appeal from Ohio Supreme Court's dismissal, for want of debatable constitutional question, of appeal from judgment denying injunction against expenditure of public funds for appropriation of property for urban renewal project. Grisanti v City of Cleveland, Ohio 1962, 83 S.Ct. 111, 371 U.S. 68, 9 L.Ed. 2d 119.

Any deliberate choice by defense counsel to delay objection to tainted evidence either to discredit witness offering evidence or to invite error will amount to a waiver binding on defendant and preclude him from decision on merits of federal claim with respect to admission of tainted evidence, either in state or federal court. Henry v. State of Miss., Miss. 1965, 85 S.Ct. 564, 379 U.S. 443, 13 L.Ed.2d 408, rehearing denied 85 S. Ct. 878, 380 U.S. 926, 13 L.Ed.2d 813, on remand 174, So.2d 348, motion denied 85 S.Ct. 1528, 381 U.S. 908, 14 L.Ed.2d 431.

Principle that Supreme Court will decline to review state court judgments which rest on independent and adequate state grounds, even where those judgments also decide federal questions, applies not only in cases involving state substantive grounds but also in cases involving procedural grounds. Id.

Doctrine that Supreme Court will decline

to review state court judgments which rest on independent and adequate state grounds is necessary to avoid advisory opinions. Id.

Where an agreed case presented no issue as to the validity of a statute, but simply the question of its construction, and that question only was considered by the state court, the Supreme Court of the United States cannot take jurisdiction because, as thus construed, the statute impaired the obligation of the contract not mentioned in the agreed case, or because it denied the equal protection of the laws in contravention of the Constitution of the United States. Louisville, etc., R.Co. v Louisville, Ky. 1897, 17 S.Ct. 725, 166 U.S. 709, 41 L.Ed. 1173.

The court acts only on the judgment and only such questions as either have been or ought to have been passed on by the state courts in the regular course of its proceedings can be considered. Fashmacht v. Frank, La. 1874, 90 U.S. 416, 23 Wall. 416, 23 L.Ed. 81.

The Supreme Court will not decide constitutional issues which are hypothetical or in advance of necessity for deciding them, or without reference to the manner in which statute whose constitutional validity is drawn in question, is to be applied. Asbury Hospital v Cass County, N.D. 1945, 66 S.Ct. 61, 326 U.S. 207, 90 L.Ed. 6.

Averment by owners of property on a public alley that an ordinance permitting the closing of it unconstutionally impairs the obligation of a contract with the dedicator does not present a substantial federal question. Bowe v.

Scott, Va. 1914, 34 S.Ct. 769, 233 U.S. 658, 58 L.Ed. 1141.

Principle that Supreme Court will decline to review court judgments which rest on independent and adequate state grounds, even where those judgments also decide federal questions, applies not only in cases involving procedural grounds. Henry v. State of Miss., Miss. 1965, 85 S.Ct. 564, 379 U.S. 443, 13 L.Ed.2d 408, rehearing denied 85 S. Ct. 878, 380 U.S. 926, 13 L.Ed.2d 813, on remand 174 So.2d 348, motion denied 85 S.Ct. 1528, 381 U.S. 908, 14 L.Ed.2d 431.

Doctrine that Supreme Court will decline to review state court judgments which rest on independent and adequate state grounds is necessary to avoid advisory opinions. Id.

If state court judgment rests upon two grounds, one of which is federal and the other nonfederal in character, United States Supreme Court does not have jurisdiction of appeal if nonfederal ground is independent of federal ground and adequate to support judgment. Jankovich v. Indiana Toll Road Commission, Inc. 1965, 85 S.Ct. 493, 379 U.S. 487, 13 L.Ed. 2d 439.

SEPARATION OF POWERS AND TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

In answer to the Petitioner's contentions that the decision violated the Separation of Powers Doctrine and the Tenth Amendment to the Constitution of the United States, the doctrine of separated legislative, judicial

and executive powers is not an essential element of a republic form of government or of the limitations on the states contained in the Fourteenth Amendment, and their courts may mischievously misconstrue their own statutes without federal intervention. Dreyer v Illinois, 187 U.S. 71 83-84 (1902). This Court will not correct a state court's misconstruction of a local municipal annexation law to preserve the state legislature's plenary powers over municipal corporations and other political subdivisions from its judiciary even on the complaints of a human property owner that it must do so to preserve a republican form of government. Forsyth v. Hammond, 166 U.S. 506, 518-519 (1897).

Compare Gomillion v. Lightfoot, 364 U.S. 339 (1960) wherein this Court heard a case as to the limits of the city which had been drawn for the express purpose of eliminating negroes.

Smaller political entities cannot be heard to plead alleged rights of its voters, especially not as a limitation on a higher state authority, so as to retain them within local boundaries, for to allow it would be to slowly commit "sovereigntial suicide" by creating "states within the state." Pershing County v. Humboldt County, 43 Nev. 78, 871-88, 181 Pac. 960, 962, reh. den. 183 Pac. 314 (1919).

The power of the states over their political offspring is so pervasive that where found to be in accordance with Kentucky

law by the state court, this Court could find no Constitutional point upon which to disturb the decision sustaining Louisville's annexation of a Naval Ordnance installation. Howard v Commissioners, 344 U.S. 624 (1953). See also Wichita Falls v Bowen, 143 Tex. 45, 182 S.W.2d 695 (1944) (Sheppard Field); County of Norfolk v City of Portsmouth, 186 Va. 1032, 45 S.E.2d 136 (1947) (Norfolk Navy Yard).

But, when a city of less than 4,000 decided to boost its population by 12,000 so as to obtain a larger share of tax revenues distributed on a per capita basis by means of annexing SAC headquarters and the major part of the free world's nuclear deferrent at Offut Air Force Base, in a state where the local court had four times earlier ruled annexations for revenue purposes only "invalid" a federal injunction may issue. United States v City of Bellevue, Nebraska, 334 F.Supp. 881 (D.C. Neb. 1971); aff'd 474 F.2d 473 (8th Cir. 1973); petition for cert. filed (U.S. May 26, 1973, No. 72-1591).

Such municipal imperialism is also "invalid" in Nevada, because the effect of annexation for taxation is to deprive property owners of their property without due process of law and thus it is unconstitutional and void. State ex rel Bibb v City of Reno, 64 Nev. 127, 118 P.2d 366 (1947).

An essential element of due process clauses, in whatever constitution found, being proper notice to those having rights to be affected, it is not startling that the statutory requisites of property owner

petitions for annexation are universally deemed to be jurisdictionally imperative, and the right of protest (even of the United States Air Force) "jealously guarded". States ex rel Quimby v City of Reno, 71 Nev. 144, 156-157, 282 P.2d 1071, 1077 (1955).

ARGUMENT RELATIVE TO THE FOURTEENTH AMENDMENT

In answer to the Petitioner's argument relative to the Fourteenth Amendment to the Constitution, Section 1, Respondent states:

To the 'innumerable" rulings that only the injured parties may complain of the violation of constitutional, or other, rights no special exception is granted to cities to allow them to urge the rights of their taxpayers to have them receive revenues. Hunter v Pittsburgh, 207 U.S. 161, 178-179 (1907). Nor will a group of its taxpayers actually present before the Court to be heard to argue that their city has a "right" to income protectable here. New Orleans v New Orleans Waterworks Co., 147 U.S. 79 (1891).

The Court will not yield in its deference to local law on a city's contention that diminution of its income by passage of a law has impaired its contractual obligations. Pawhuska v Pawhuska Oil & Gas Co., 250 U.S. 394 (1919).

Municipal corporations have no constitutional "right to revenue" for the courts

to protect. State ex rel Adams v Crawford, 99 Conn. 378, 121 Atl. 800 (1923); Re Heineman, 201 Wis. 484, 230 N.W. 698 (1930).

A few years later, taxpayers brought here for review a federal decision in favor of municipal bond creditors compelling them to continue paying taxes to an ousted city on the theory that the municipality had exercized "de facto" jurisdiction over their noncontiguous lands in which they had earlier acquiesced without protests, of taxes or otherwise, and thus were estopped. This Court, first stating that it was unquestionably bound to apply the local law gleaned from Florida statutes or decisions, rigidly adhered to the state cases, discovered that under them there could be no de jure annexation of noncontiguous lands under the statutes, and finding the annexation void, held that no amount of taxpayer consent could substitute for a statutory grant of power and reversed. Ocean Beach Heights, Inc., v Brown-Crummer Invest. Co., 302 U.S. 614 (1938).

Probably no better illustration of how extremely well settled the point is can be cited than the case of Smith v City of Winter Haven, 18 So.2d 4 (Fla. 1944) in which, although a federal judgment compelled the city to continue taxing a noncontiguous black neighborhood from which the state court had ousted it, the court reversed the trial judge's denial of an injunction.

The respondent taxpayers have no more quarrel with the principle that a court decision amounts to state action within the mean-

ing of the Fourteenth Amendment quoted by the Petitioner from 16 Am. Jur. 2d, than they do with the ruling in Monaco v. Mississippi, 292 U.S. 313 (1934) that the Eleventh Amendment prevents federal courts from entertaining actions brought by foreign principalities against states. But the protection of the Fourteenth Amendment is extended only to human beings and the private corporations in which they have property interests, and since the petitioner city did not produce in evidence before the trial or appellate court either its certificate of birth or naturalization, the co-equal judicial branch of its parental state government had every right to commit infanticide, devouring its offspring even without due process or equal protection of the laws.

In answer to the argument that the decision violated the Fifth Amendment to the United States Constitution, Petitioner re-adopts and incorporates those cases cited with the Fourteenth Amendment to the Constitution of the United States.

CONCLUSION

The Respondent, Clark County, contends the Petition for a Writ of Certiorari ought to be denied on the grounds that no federal questions were at any time raised in the proceedings below nor was there any federal question that was briefed in the proceedings below, and that a federal question was not necessary to the opinion as decided by the trial Court.

The law is clear that the boundaries of a municipality is within the sound discretion of the state government and does not involve any federal question.

The Respondent does not conceive any federal questions being raised under the Separation of Powers Doctrine nor under the Tenth Amendment to the Constitution.

The Respondent does not conceive any denial of equal protection because tax revenues may be denied to the Petitioner.

The Respondent does not conceive any violation of the one man, one vote principle nor any violation of the Fourteenth Amendment.

The Respondent does not conceive any rights or privileges guaranteed under the Fifth Amendment in the fact pattern herein.

It is further noted that this Court has never granted a Writ of Certiorari relative to the boundaries of a municipal corporation even where the boundaries were drawn boundaries because of racism.

To grant this petition would mean that this Court would have to find that it had the authority to review the judgment and opinion of the Supreme Court of the State of Nevada without there being

any federal question involved.

Respectfully submitted,

ROY A. WOOFTER
District Attorney

By Charles L. Garner
CHARLES L. GARNER
Chief Deputy

Attorney for Respondent,
CLARK COUNTY, NEVADA

PROOF OF SERVICE

STATE OF NEVADA)
ss:
COUNTY OF CLARK)

CHARLES L. GARNER, being first duly sworn, deposes and says:

That on the 12th day of September, 1973, I mailed three copies of the foregoing Brief in Opposition to Petition to Writ of Certiorari to:

WILLIAM S. BARKER
514 South Third Street
Las Vegas, Nevada 89101
Counsel for Petitioner

HARRY J. MANGRUM, JR.
323 Las Vegas Blvd. South
Las Vegas, Nevada 89101
Counsel for Respondent
Sunrise Manor Protective
Association

. . . . . .

. . . . . .

. . . . . .

. . . . . .

. . . . . .

Further, that postage was fully prepaid, and that there is regular communication by the United States mails between the place of posting and the place so addressed.

Charles L Garner
CHARLES L. GARNER

Subscribed and sworn to before me this 12th day of September, 1973.

Nancy L. Carson
Notary Public.

NANCY L. CARSON
Notary Public—State of Nevada
COUNTY OF CLARK
My Commission Expires Oct. 22, 1976